रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003–05 REGD. No. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
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सं. 21] नई दिल्ली, मई 27—जून 2, 2018, शनिवार/ज्येष्ठ 6—ज्येष्ठ 12, 1940
No. 21] NEW DELHI, MAY 27—JUNE 2, 2018, SATURDAY/JYAISTHA 6—JYAISTHA 12, 1940

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

विदेश मंत्रालय

(सी.पी.वी. प्रभाग)

नई दिल्ली, 22 मई, 2018

का.आ. 844.—राजनयिक और कोंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश । एतद्द्वारा, केंद्र सरकार भारत के प्रधान कोंसलावास, म्यूनिख में श्री सौरभ, सहायक अनुभाग अधिकारी को दिनांक 22 मई, 2018 से सहायक कोंसुलर अधिकारी के तौर पर कोंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है ।

[सं. टी-4330/01/2014]

प्रकाश चन्द, निदेशक (कोंसुलर)

MINISTRY OF EXTERNAL AFFAIRS

(C.P.V. DIVISION)

New Delhi, the 22nd May, 2018

S.O. 844.—Statutory Order in pursuance of clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Shri Sourabh, Assistant Section Officer as Assistant Consular Officer in Consulate General of India, Munich to perform the Consular services with effect from 22 May, 2018.

[No. T-4330/01/2014]

PRAKASH CHAND, Director (Consular)

परमाणु ऊर्जा विभाग

मुंबई, 16 मई, 2018

का.आ. 845.—केंद्रीय सरकार, परमाणु ऊर्जा विभाग के प्रशासनिक नियंत्रण के अधीन नाभिकीय ईंधन सम्मिश्र, हैदराबाद, जिसके 80 प्रतिशत से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को राजभाषा नियम (संघ के शासकीय प्रयोजनों के लिए प्रयोग) 1976 के नियम 10 के उपनियम (4) के अनुसरण में अधिसूचित करती है।

[सं. 6/7/2018-हिंदी]

ए. आर. सुले, संयुक्त सचिव (अनुसंधान एवं विकास)

DEPARTMENT OF ATOMIC ENERGY

Mumbai, the 16th May, 2018

S.O. 845.—In pursuance of Sub-rule (4) of Rule 10 of the Official Language (Use for Official Purpose of the Union) Rules, 1976, the Central Government hereby notifies Nuclear Fuel Complex, Hyderabad under the administrative control of the Department of Atomic Energy, where more than 80% staff have acquired the working knowledge of Hindi.

[No. 6/7/2018- Hindi]

A. R. SULE, Jt. Secy. (R&D)

मुंबई 16 मई, 2018

का.आ. 846.— केंद्रीय सरकार, परमाणु ऊर्जा विभाग के प्रशासनिक नियंत्रण के अधीन इंडियन रेअर अर्थ्स लिमिटेड, मुंबई के अधीनस्थ कार्यालय रेअर अर्थ्स प्रभाग, उद्योगमंडल, केरल जिसके 80 प्रतिशत से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को राजभाषा नियम (संघ के शासकीय प्रयोजनों के लिए प्रयोग) 1976 के नियम 10 के उपनियम (4) के अनुसरण में अधिसूचित करती है।

[सं. 6/7/2018-हिंदी]

ए. आर. सुले, संयुक्त सचिव (अनुसंधान एवं विकास)

Mumbai, the 16th May, 2018

S.O. 846.—In pursuance of Sub-rule (4) of Rule 10 of the Official Language (Use for Official Purpose of the Union) Rules, 1976, the Central Government hereby notifies Rare Earths Division, Udyogamandal, Kerala, a subordinate Office of the Indian Rare Earths Limited (IREL), Mumbai under the administrative control of the Department of Atomic Energy, where more than 80% staff has acquired working knowledge of Hindi.

[No. 6/7/2018- Hindi]

A. R. SULE, Jt. Secy. (R&D)

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 18 मई, 2018

का.आ. 847.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय, जोधपुर के पंचाट (03/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 18.05.2018 को प्राप्त हुआ था।

[सं. एल-39025/01/2017-आई आर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 18th May, 2018

S.O. 847.—In pursuance of Section 17 of the Industrial Disputes Act, 1947(14 of 1947), the Central Government hereby publishes the Award Ref. 03/2010 of the Industrial Tribunal/Labour Court, Jodhpur as shown in the Annexure, in the industrial dispute between the management of UCO Bank and their workmen, received by the Central Government on 18.05.2018.

[No. L-39025/01/2017-IR (B-II)]

RAVI KUMAR, Section Officer

अनुबंध

औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, जोधपुर (राज.)

पीठासीन अधिकारी — श्री अजय कुमार शर्मा—1
आर.एच.जे.एस.

औद्योगिक विवाद संख्या — 03 / 2010

जुगलकिशोर अरोड़ा पुत्र श्री गिरीराज अरोड़ा, ठिकाना समदडियों

का बास, अस्पताल के पास पीपाड शहर जिला जोधपुर ।

सेवापृथक चपरासी यूको बैंक शाखा पीपाड शहर, जिला जोधपुर ।

...प्रार्थी

बनाम

1. क्षेत्रीय प्रबन्धक, यूको बैंक जी—79 शास्त्री नगर, जोधपुर ।

2. शाखा प्रबन्धक, यूको बैंक शाखा पीपाड शहर, जिला जोधपुर ।

...अप्रार्थीगण

उपस्थिति :

1. प्रार्थी प्रतिनिधि श्री विनोद पुरोहित उप.।

2. अप्रार्थी प्रतिनिधि श्री जगदीश व्यास उप.।

—:अधिनिर्णय:— दिनांक: 01.11.2017

प्रार्थी जुगलकिशोर की ओर से यह प्रार्थना पत्र औद्योगिक विवाद अधिनियम, 1947 की धारा 33—ए के तहत न्यायालय में अपने प्रतिनिधि श्री विनोद पुरोहित के माध्यम से दिनांक 17.12.2009 को पेश किया ।

संक्षेप में तथ्य इस प्रकार है । प्रार्थी का कहना है कि दिनांक 31.12.2005 को प्रार्थी को अप्रार्थी नियोजक द्वारा चपरासी के पद पर नियोजित किया गया था। प्रार्थी की सेवाए लगातार एवं सन्तोषजनक रही। उसे सेवा कार्य के बदले 70 / —रुपये प्रतिदिन के हिसाब से मजदूरी दी जाती थी। प्रार्थी को जब नियोजक द्वारा नियमानुसार देय वेतनमान, भत्तों को नियमानुसार नही दिया गया तो प्रार्थी ने सहायक श्रम आयुक्त (केन्द्रीय) श्रम समझोता अधिकारी, श्रम विभाग केन्द्रीय सरकार, अजमेर के समक्ष एक प्रार्थना पत्र ए जे—7 (15) / 2008 एएलसी माह दिसम्बर,2008 में प्रस्तुत किया। अप्रार्थी को उक्त प्रार्थना पत्र पर नोटिस दिया गया। नोटिस सहायक श्रम आयुक्त के द्वारा जारी किया गया था। उनकी तामील अप्रार्थी पर हुई और अप्रार्थी ने इस

दौरान प्रार्थी के विरूद्ध दमनात्मक कार्यवाही करते हुये मौखिक आदेश के जरिये दिनांक 2.1.2009 के कार्योपरान्त सेवा से पृथक कर दिया। प्रार्थी की मौखिक सेवा समाप्ति बिना किसी कारण व औद्योगिक विवाद अधिनियम, 1947 की धारा 25 एफ (3) के प्रावधानों के विरूद्ध की गई है प्रार्थी द्वारा श्रम आयुक्त के समक्ष दिये गये प्रार्थना पत्र को पराजि करने के लिये व न्याय से प्रार्थी को वंचित करने के लिये दिनांक 2.1.2009 को सेवा समाप्त की गई अतः प्रार्थी द्वारा धारा 33 ए औद्योगिक विवाद अधिनियम,1947 के तहत यह प्रार्थना पत्र प्रस्तुत किया गया। प्रार्थी का कहना है कि प्रार्थी को दिनांक 16.12.2008 से दिनांक 2.2.2009 तक का वेतन भी अदा नहीं किया गया है। अप्रार्थी द्वारा प्रार्थी के विरूद्ध दिनांक 7.1.2009 की तारीख पेशी के नोटिस तामील होने के पश्चात् विद्वेष पूर्ण एवं दमनात्मक कार्यवाही अमल में लाते हुये उसे सेवा से पृथक किया गया है। अतः उक्त सेवा समाप्ति अवैध, शून्य व निष्प्रभावी है। प्रार्थी ने नियुक्ति तिथि से दिनांक 2.2.2009 तक निरन्तर एवं सन्तोषजनक सेवा कार्य करते हुये कलेण्डर वर्ष में 240 दिवस से अधिक की सेवा पूर्ण की है। अप्रार्थी द्वारा धारा 25 एफ औद्योगिक विवाद अधिनियम,1947 के बन्धनकारी प्रावधानों की पालना नहीं की है और न ही अप्रार्थी ने अन्तिम आवक–प्रथम जावक के सिद्धान्त का अनुसरण किया। प्रार्थी का कहना है कि सेवा समाप्ति दिनांक से निरन्तर बेरोजगार चल रहा है और उसके द्वारा ऐसा कहा गया है कि अप्रार्थी द्वारा जारी मौखिक आदेश दिनांक 2.1.2009 जिसके तहत प्रार्थी को सेवा से पृथक किया गया है उसे अवैध, अनुचित घोषित करते हुये प्रार्थी की सेवाए लगातार मानते हुये उसे अनुगामी लाभ प्रदान किये जावे ।

अप्रार्थी की ओर से प्रारम्भिक आपत्ति यह ली गई है कि उनके यहां चपरासी का कोई पद सृजित नहीह है। नियुक्ति के लिये अधीनस्थ वर्ग के कर्मचारियों के लिये भर्ती हेतु नियम बने हुये है उसी अनुसार नियुक्ति दी जाती है। प्रार्थी को कोई भी नियुक्ति पत्र जारी नहीं किया गया है। कार्य आवश्यकता के अनुसार दैनिक मजदूर के रूप में बुलाया जाता है। प्रार्थी को जितने दिवस उसने कार्य किया है प्रतिदिवस निर्धारित दर 70/–रुपये के हिसाब से मजदूरी दी गई। प्रार्थी व अप्रार्थी के बीच में श्रमिक व नियोजित का सम्बन्ध स्थापित नहीं है। अतः प्रार्थना पत्र खारिज करने की प्रार्थना की । अप्रार्थी की यह भी आपत्ति है कि प्रार्थी को पूर्णतया अंशकालिन रूप से शाखा में साफ–सफाई का कार्य करने हेतु लगाया गया था। अतः ऐसे मामलो में धारा 25 एफ अधिनियम के प्रावधान लागू नहीं होते है। अप्रार्थी की ओर से पदवार जबाब में प्रार्थी द्वारा अपने मांग पत्र में किये गये समस्त कथनों से इनकार किया है व यह कहा है कि अप्रार्थी बैंक द्वारा ऐसा कोई कथन नहीं किया गया है कि जो नियम विरूद्ध, असंवैधानिक हो और औद्योगिक विवाद अधिनियम, 1947 के प्रावधानों के विपरीत हो और प्रार्थना पत्र खारिज करने की प्रार्थना की । अतिरिक्त कथन में अप्रार्थी का यह कहना है कि माननीय उच्चतम न्यायालय द्वारा हिमाचल प्रदेश बनाम सुरेशकुमार वर्मा ए आई आर 1996 एससी पेज 1565 में यह सिद्धान्त प्रतिपादित किया है कि सरकारी विभागों में ऐसी नियुक्ति वैध नही मानी जाती है जो दैनिक वेतन पर की गई हो। अप्रार्थी द्वारा अपने जबाब में यह उद्रण यूनियन पब्लिक सर्विस कमिशन बनाम गिरीश जयन्तिलाल वाघेला वगेरा ए आई आर 2006 एससी पेज 1165, एवं सचिव कर्नाटक राज्य बनामत उमादेवी ए आई आर 2006 एससी पेज 1806 व नेशनल फर्टिलाईजर लि. बनाम सोमवीरसिंह ए आई आर 2006 एससी पेज 2319 में यह सिद्धान्त प्रतिपादित किया गया है कि जो कर्मचारी दैनिक वेतनभोगी है जो नियमित कर्मचारी नही है उनको काई संरक्षण कानून का प्राप्त नहीं है। अतः प्रार्थना पत्र धारा 33 ए औद्योगिक विवाद अधिनियम,1947 को सव्यय खारिज करने की प्रार्थना की।

दोनों पक्षो के तर्को पर मनन किया। पत्रावली का अवलोकन किया गया इस प्रकरण में न्यायालय को यह तय करना है कि ''प्रार्थी की मौखिक रूप से अप्रार्थी द्वारा की गई सेवासमाप्ति औद्योगिक विवाद अधिनियम,1947 के अधीन अवैध है ?''

जहां तक प्रार्थी के अप्रार्थी के यहां चतुर्थ श्रेणी कर्मचारी के रूप में काय्र करने का प्रश्न है। अप्रार्थी की ओर से अपने जबाब में यह स्वीकार किया गया है कि प्रार्थी अप्रार्थी के यहां सफाई आदि का कार्य करता था और उसे 70/–रुपये प्रतिदिन मजदूरी दी जाती थी। प्रार्थी जुगलकिशोर ने अपने शपथ पत्र में अपनी नियुक्ति चपरासी के पद पर दिनांक 31.12.2005 को बताई है और उसके द्वारा दिनांक 2.1.2009 तक लगातार अप्रार्थी के अधीन उसके निर्देश पर 70/–रुपये रोज पर कार्य करना बताया है अब प्रार्थी जुगलकिशोर से किये गये प्रतिपरीक्षण को देखे तो जुगलकिशोर प्रार्थी ने यह स्वीकार किया है कि उसे मैनेजर साहब द्वारा मौखिक आदेश से लगाया गया था। यह भी स्वीकार किया गया है कि दिनांक 31.12.205 को नियुक्ति नही दी थी अपितु मौखिक आदेश से लगाया था। उस समय मैनेजर साहब श्री ए0के0गुप्ता थे। भर्ती का विज्ञापन समाचार पत्र में नहीं निकाला था। इस सुझाव को गलत बताया कि मैनेजर साहब ने साफ सफाई व पानी भरने के लिये रखा हो और उसके आने व जाने का समय नियत न किया हो बल्कि प्रार्थी का प्रतिपरीक्षण में कहना है कि वह सुबह

9 बजे आता था और शाम को बैंक का लॉक लगाने के बाद जाता था। उसे 70/—रुपये मजदूरी उस कार्य की मिलती थी। इस सुझाव को गलत बताया कि वह अपनी इच्छा से मजदूरी पर आता हो और आने के लिये स्वतन्त्र हो । यह भी स्वीकार किया कि उसे मजदूरी का भुगतान वाउचर पर हस्ताक्षर करके दिया जाता था। उसने समान वेतनमान व भत्ते प्राप्त करने हेतु सहायक श्रम आयुक्त, अजमेर के समक्ष कौनसी तारीख को प्रार्थना पत्र पेश किया यह याद नहीं है। नोटिस अप्रार्थी बैंक को दिनांक 2.1.2009 को मिले थे। इस सुझाव को गलत बताया कि दिनांक 8.11.2008 के पश्चात् बैंक ने कोई भुगतान न किया हो। उसने काम किया। उसे राजेश व महेश के नाम से भुगतान करवाकर हस्ताक्षर किये गये। राजेश व महेश को वह जानता है वो बैंक में काम नहीं करते है। राजेश व महेश ने मैनेजर साहब के कहने से हस्ताक्षर किये । प्रदर्श—2 से 4 के ए से बी भाग पर राजेश के हस्ताक्षर है और प्रदर्श— 5 व 6 पर महेश के हस्ताक्षर ए से बी है। राजेश के हस्ताक्षरित रसीद दिनांक 8.12.2008 और 18.12.2008 जिनके द्वारा उसको 560/—रुपये और 700/—रुपये का भुगतान किया गया तथा रसीद प्रदर्श—4 के माध्यम से राजेश को 400/—रुपये का भुगतान किया गया। प्रदर्श—5 व 6 जो रसीदे है उनमें 420/—रुपये व 350/—रुपये का भुगतान महेश को किया गया। उक्त भुगतान करने की शिकायत उसने कहीं नहीं की । फिर स्वतः गवाह ने कहा कि उसने शिकायत का प्रार्थना पत्र दिया जिसकी रसीद उसे नहीं दी गई। उस शिकायत की प्रतिलिपि पत्रावली पर पेश नहीं की । उसे पता नहीं कि बैंक में काम करने वाले मजदूरों का उपस्थिति रजिस्टर रखा जाता हो। उसे पता नही कि उसके हस्ताक्षर इसलिये नही करवाते हो कि बैंक का कर्मचारी नही हो। इस सुझाव को गलत बताया कि दिनांक 8.11.2008 के पश्चात् उसने कार्य न किया हो।

अप्रार्थी की ओर से राजीव सूद वरिष्ठ प्रबन्धक यूको बैंक प्रस्तुत हुये है। जिन्होंने अपने मुख्य शपथ पत्र में प्रार्थी को पूर्णतया अंशकालिन रूप से आवश्यकता कार्य लेना व 70/—रुपये प्रतिदिन के हिसाब से मजदूरी देना स्वीकार किया है और यह भी स्वीकार किया है कि दिनांक 8.11.2008 के पश्चात प्रार्थी ने उक्त शाखा में कोई प्रार्थना पत्र नही दिया। उनका कहना है कि दिनांक 8.11.2008 के बाद कभी मजदूरी करने नही आया और उसने कोई कार्य न किया हो ।

प्रतिपरीक्षण में श्री राजीव सूद का कहना है कि प्रार्थी द्वारा समस्त वाउचर प्रदर्श 1 उनके बैंक के है। यह भी स्वीकार किया है कि प्रार्थी ने उनकी शाखा पीपाड शहर में केजूअल लेबर के रूप में काम किया। प्रार्थी को 70/—रुपये रोज के हिसाब से मजदूरी दी जाती थी। यह भी स्वीकार किया कि प्रार्थी ने दिनांक 31.12.2005 से केजूअल लेबर के रूप में काम शुरू किया था। प्रदर्श—1 वाउचर प्रार्थी से सम्बन्धित है लेकिन दिनाक 15.1.2008 में प्रार्थी का नाम अंकित नहीं है वाउचर बैंक का ही है। प्रदर्श—1 में भुगतान प्राप्त करने वालों के हस्ताक्षरों को वह नहीं पहचानता लेकिन इन वाउचर में प्रार्थी का नाम अंकित है। यह भी स्वीकार किया कि प्रार्थी वर्ष 2005 से 2008 तक पीपाड शाखा में अधिकारी नहीं था। बैंक की किसी शाखा में मुख्यालय के निर्देशानुसार कोई निर्देश केजुअल लेबल के जारी नहीं किये। शपथ पत्र के पद संख्या 4 में इस गवाह ने यह उल्लेखित किया है कि बैंक नियमों के अनुसार शाखा प्रबन्धक को किसी भी व्यक्ति को बैंक में नियुक्त करने का अधिकार नही है। अतः वर्ष 2005 से 2008 के मध्य तैनात शाखा प्रबन्धक के विरूद्ध नियमों के विपरीत आकस्मिक श्रमिक पार्टटाईम रखने बाबत कोई नोटिस या जांच नही की गई यह स्वीकार किया गया है। फिर कहा कि नियुक्ति शब्द में केजूअल लेबर की नियुक्ति शामिल नही है । इससे यह जाहिर होता हे कि प्रबन्धक को आकस्मिक श्रमिक रखने का अधिकार प्राप्त है। अप्रार्थी की ओर से चपरासी की भर्ती से सम्बन्धित कोई नियमावली, परिपत्र पेश नहीं किये गये है। वर्ष 2005 से पीपाड शाखा में चपरासी दफतरी एच पी बोहरा था जिसका स्थानान्तरण हो गया । इसके अलावा पार्टटाईम स्वीपर था जिसका काम करीब 3 घंटे था। सन 2005 के बाद बैंक में कोई चपरासी नहीं लगा था। फिर कहा बोहरा चपरासी नहीं था दफतरी था। अप्रार्थी की ओर से दूसरा गवाह के0सी0 काका प्रस्तुत हुआ है जिससे प्रार्थी ने जिरह करने का अवसर कोस्ट पर प्राप्त किया एवं कोस्ट अदा करने हेतु अवसर चाहा , कोस्ट अदा नही करने पर अप्रार्थी की जिरह नही पढी जावेगी। ऐसी स्थिति में मेरी राय में श्री केसी काका का बयान अब पठनीय नहीं है क्योंकि सशर्त आदेश के तहत प्रार्थी को जिरह का अवसर हर्जे पर दिया गया था किन्तु प्रार्थी ने हर्जा अदा नही किया।

उपरोक्त दोनों पक्षों की साक्ष्य से यह तो प्रमाणित होता है कि प्रार्थी व अप्रार्थी के बीच में श्रमिक व नियोजक का रिश्ता है । अप्रार्थी की ओर से प्रस्तुत गवाह व जबाब से यह स्पष्ट होता है कि प्रार्थी अप्रार्थी बैंक की शाखा में वर्ष 2005 से नवम्बर 2008 तक कार्यरत था। प्रार्थी को मौखिक रूप से अंशकालिन कर्मचारी के रूप में लगाया गया यह भी स्वीकृत तथ्य है और उसे 70/—रुपये रोज मजदूरी दी जाती थी। इस बात से भी इनकार नही किया गया है कि प्रार्थी ने मजदूरी बढ़ाने व उसे नियमित करने के लिये श्रम विभाग में प्रार्थना पत्र

प्रस्तुत किया लेकिन विवाद अधिसूचित होने से पूर्व प्रार्थी को सेवा से विद्वेषपूर्वक तरीके से हटाया गया। न तो प्रार्थी को कोई नोटिस दिया गया, न ही उसे छंटनी मुआवजा दिया गया। ऐसी स्थिति में जाहे भेले अंशकालिन कर्मचारी हो या दैनिक वेतन भोगी कर्मचारी हो उसे औद्योगिक विवाद अधिनियम, 1947 के तहत धारा 25–एफ, 25–जी एवं 25–एच का संरक्षण प्राप्त है। प्रार्थी की सेवाए , सेवा समाप्ति से पूर्व कलेण्डर वर्ष में 240 दिवस से अधिक प्रमाणित हुई है। ऐसी स्थिति में प्रार्थी को औद्योगिक विवाद अधिनियम, 1947 की धारा 25एफ के तहत प्रावधानों के विपरीत बिना नोटिस–पे व छंटनी मुआवजा दिये बिना सेवा से नहीं हटाया जा सकता। जहां तक अप्रार्थी का यह कहना कि प्रार्थी की नियुक्ति नियमों के विरूद्ध है। अप्रार्थी के गवाह पी.डब्ल्यू. 1 राजीव सूद की स्वीकृति के अनुसार आकस्मिक श्रमिक को प्रबन्धक द्वारा रखा जा सकता है। ऐसी कोई नियमावली व निर्देश अप्रार्थी की ओर से प्रस्तुत नही किये गये है कि प्रार्थी की नियुक्ति अमुक नियम के तहत नियम विरूद्ध है।

अप्रार्थी की ओर से न्यायालय का ध्यान 2014 (7) एससीसी पेज 177 भारत संचार निगम लि. बनाम भूरूमल एवं 2014 (7) एससीसी पेज 190 हरिनंदन प्रसाद व अन्य बनाम एफ सी आई की ओर दिलाया जिसमें प्रथम मामले में माननीय उच्चतम न्यायालय द्वारा श्रमिक को पुर्ननियुक्ति दिये जाने के स्थान पर तीन लाख रूपये की क्षतिपूर्ति दिलाई क्योंकि मामले में काफी विलम्ब हो गया था और प्रार्थी की सेवा अवधि कम बची थी। दूसरे मामले में निर्णय दिया है कि आकस्मिक श्रमिक व दैनिक वेतनभोगी एवं स्थाई कर्मचारी की सेवाए यदि धारा 25 एफ औद्योगिक विवाद अधिनियम, 1947 की पालना के बिना समाप्त की जाती है तो वह अनफेयर लेबर प्रेक्टिस की तारीफ में आता है। अतः श्रमिक को ऐसे मामले में अन्य श्रमिक की तरह सेवा में लिया जाना चाहिये।

एक न्यायिक दृष्टान्त 2010 (9) एससीसी पेज 126 प्रभारी अधिकारी बनाम शंकर शेट्टी अप्रार्थी की ओर से बहस के दौरान पेश किया गया है जिसमें श्रमिक को एक लाख रूपये की क्षतिपूर्ति पुर्ननियुक्ति की बजाय दिलाई गई है। मेरी राय में यह ऐसा मामला नही है। अतः उपरोक्त न्यायिक दृष्टान्त हस्तगत प्रकरण के तथ्यों एवं परिस्थितियों से भिन्न होने के कारण लागू नहीं होते है।

मेरी राय में अप्रार्थी द्वारा औद्योगिक विवाद अधिनियम,1947 की धारा 33–ए में निम्न प्रावधान किया हुआ है–

यह न्यायनिर्णीत करने के लिये विशेष उपबन्ध की कार्यवाहियों के लम्बित रहने के दौरान सेवा की शर्ते आदि बदली है या नहीं– जहां कि कोई नियोजक कार्यवाहियों के सुलह अधिकारी, बोर्ड, मध्यस्थ, श्रम न्यायालय, अधिकरण या राष्ट्रीय अधिकरण के समक्ष लम्बित रहने के दौरान धारा 33 के उपबन्धों का उल्लंघन करता है वहां ऐसे उल्लंघन से व्यथित कर्मचारी ऐसे श्रम न्यायालय, अधिकरण या राष्ट्रीय अधिकरण में लिखित परिवाद, विहित रीति से–

क. ऐसे सुलह अधिकारी या बोर्ड को कर सकेगा और सुलह अधिकारी या बोर्ड ऐसे परिवार का सुलह कराने और ऐसे औद्योगिक विवाद का समझोता कराने के लिये ध्यान देगा, और

ख. ऐसे मध्यस्थ, श्रम न्यायालय, अधिकरण या राष्ट्रीय अधिकरण को कर सकेगा और ऐसे परिवाद की प्राप्ति पर, यथास्थिति, मध्यस्थ, श्रम न्यायालय, अधिकरण या राष्ट्रीय अधिकरण, परिवाद का न्यायनिर्णयन करेगा मानो वह परिवाद इस अधिनियम के उपबन्धों के अनुसार उसे निर्देशित या उसके समक्ष लम्बित विवाद हो और अपना अधिनिर्णय समुचित सरकार को प्रस्तुत करेगा और इस अधिनियम के उपबन्ध तदनुसार लागू होंगे।

उक्त प्रावधानों के तहत यह दृष्टिगोचर होता है कि अप्रार्थी द्वारा प्रार्थी के मामले में औद्योगिक विवाद अधिनियम, 1947 की धारा 33 व 33ए का भी उल्लंघन किया गया है। अतः पूर्व सेवा अंशकालिन कर्मचारी/दैनिक वेतन भोगी कर्मचारी के रूप में जो दिनांक 2.1.2009 को था उसे चतुर्थ श्रेणी कर्मचारी आकस्मिक श्रमिक/अंशकालिन के पद पर पुनः नियुक्त किये जाने योग्य है। प्रार्थी की सेवाए निरन्तर मानी जावे और प्रार्थी को नियमानुसार दर से वेतन राशि व परिलाभ दिये जावे ।

–:अधिनिर्णय:–

अतः यह अधिनिर्णय किया जाता है कि:–

1. औद्योगिक विवाद अधिनियम, 1947 की धारा 33 ए के तहत प्रार्थी का विवाद लम्बित रहते सेवा से पृथक करना अवैध एवं अनुचित है। प्रार्थी को पुनः सेवा में बहाल किया जावे।

2. प्रार्थी जुगलकिशोर अरोडा पुत्र श्री गिरीराज अरोड़ा, निवासी समदडियों का बास, अस्पताल के पास,पीपाड शहर को पूर्वसेवा अंशकालिन कर्मचारी/दैनिक वेतन भोगी कर्मचारी के रूप में जो दिनांक 2.1.2009 को था, चतुर्थ श्रेणी कर्मचारी आकस्मिक श्रमिक/अंशकालिन के पद पर पुनः नियुक्त किया जावे।

3. प्रार्थी की सेवाए निरन्तर मानी जावे और प्रार्थी को नियमानुसार दर से वेतन राशि व परिलाभ दिये जावे ।

यह आदेश मेरे द्वारा लिपिबद्ध करवाया जाकर आज दिनांक 01.11.2017 को खुले न्यायालय में हस्ताक्षर कर उद्घोषित किया गया।

अजय कुमार शर्मा—1, न्यायाधीश

नई दिल्ली, 18 मई, 2018

का.आ. 848.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक आफ बड़ौदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय, जोधपुर के पंचाट (संदर्भ सं. 04/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.05.2018 को प्राप्त हुआ था।

[सं. एल-39025/01/2017-आई आर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 18th May, 2018

S.O. 848.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref .04/2012) of theIndustrial Tribunal/Labour Court, Jodhpur as shown in the Annexure, in the industrial dispute between the management of Bank of Barodaand their workmen, received by the Central Government on 18.05.2018

[No. L-39025/01/2017 - IR(B-II)]

RAVI KUMAR, Section Officer

अनुबंध

औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, जोधपुर (राज.)

पीठासीन अधिकारी — श्री अजय कुमार शर्मा—1
आर.एच.जे.एस.

श्रम विवाद संख्या — 04/2012

सरूपसिंह पुत्र श्री कुम्भसिंह, उम्र 41 वर्ष, जाति राजपूत, निवासी
ग्राम बेलवा, पोस्ट बेलवा, राजगढ़, तहसील शेरगढ़, जिला जोधपुर।

...प्रार्थी

बनाम

सहायक महाप्रबन्धक, बैंक आफ बड़ौदा, क्षेत्रीय कार्यालय
(जोधपुर क्षेत्र), 63 पोलो प्रथम, पावटा, जोधपुर ।

...अप्रार्थी

उपस्थिति :

1. प्रार्थी प्रतिनिधि श्री के0के0व्यास उप0।

2. अप्रार्थी प्रतिनिधि श्री धनेश सारस्वत उप0।

अधिनिर्णय

दिनांक : 19.12.2017

इस अधिनिर्णय को प्रकाशनार्थ केन्द्र सरकार को प्रेषित किया जावे केन्द्र सरकार की ओर से जरिये अधिसूचना नम्बर एल–12012/41/2008–आईआर(बी–II) दिनांक 01.09.2008 जो विवाद अधिसूचित किया गया है वह इस प्रकार है–

''Whether the action of the management of Bank of Baroda in terminating of service of Sh.Saroop Singh S/o Kumbsingh w.e.f. 5.1.2007 is legal and justified.To what relief the concerned workman is entitled ?"

संक्षेप में तथ्य इस प्रकार हैः–

प्रार्थी ने अधिसूचित विवाद के सम्बन्ध में अपना मांग पत्र पेश किया। प्रार्थी ने अपने मांग पत्र में कहा है कि प्रार्थी–श्रमिक की प्रथम नियुक्ति अप्रार्थी बैंक की शाखा मरूधर इण्ड. ऐरिया, बासनी जोधपुर में दिनांक 20.5.1996 को स्वीपर के पद पर की गई थी तथा प्रार्थी–श्रमिक की सेवाओं से सन्तुष्ट होने पर अप्रार्थी बैंक के अधिकारियों द्वारा प्रार्थी की सेवाओं को निरन्त रखा गया । तत्पश्चात् प्रार्थी द्वारा दस वर्ष तक अप्रार्थी बैंक में कार्य किया एवं उसका स्थानान्तरण दिनांक 12.12.2005 को चान्दपोल, जोधपुर शाखा में कर दिया गया और प्रार्थी–श्रमिक ने दिनांक 13.12.2005 को चान्दपोल शाखा में अपना कार्य ग्रहण किया। प्रार्थी–श्रमिक द्वारा अप्रार्थी बैंक के अधिकारियों को नियमित करने का निवेदन किया लेकिन बावजूद आश्वासन के उसे नियमित नही किया गया और व्यथित होकर प्रार्थी को दिनांक 5.1.2007 को कार्य समाप्ति के बाद मौखिक रूप से सेवामुक्त कर दिया गया। प्रार्थी द्वारा लिखित में कारण मांगा तो बैंक अधिकारियों द्वारा कोई कारण देने से इनकार कर दिया । अप्रार्थी का उपरोक्त कृत्य औद्योगिक विवाद अधिनियम,1947 की धारा 25–एफ,25–जी एवं 25–एच के प्रावधानों के अन्तर्गत आता है और इन धाराओं का अप्रार्थी बैंक द्वारा उल्लंघन किया गया है। प्रार्थी को सेवामुक्त करने से पूर्व न तो आरोप पत्र दिया गया, न ही कोई जांच कार्यवाही की,न किसी प्रकार का नोटिस दिया, न ही नोटिस–पे, छंटनी मुआवजा दिया और उसे सेवामुक्त कर दिया। बैंक का उक्त कृत्य अनुचित श्रम व्यवहार की तारीफ में आता है। अप्रार्थी बैंक द्वारा प्रार्थी–श्रमिक को सेवामुक्त करने से पूर्व नियमानुसार वरिष्ठता सूची भी जारी नहीं की ।

प्रार्थी की ओर से निवेदन किया है कि प्रार्थी के सेवामुक्ति आदेश दिनांक 5.1.2007 को अवैध एवं शून्य घोषित किया जावे, पुनः सेवा में स्थापित किया जावे तथा उसकी सेवा प्रथम नियुक्ति दिनांक से निरन्तर मानी जावे और सेवा में पुनः स्थापित करने की अवधि का पूरा बकाया वेतन का भुगतान किया जावे।

अप्रार्थी ने अपने जवाब में कहा है कि प्रार्थी के मांग पत्र में अंकित तथ्यों से इंकार किया है और कहा है कि प्रार्थी को अप्रार्थी के किसी भी सक्षम अधिकारी द्वारा किसी भी प्रकार की स्थाई नियुक्ति नही दी गई। भारत सरकार के दिशा निर्देशों के अनुसार शाखा प्रबंधक को किसी भी बाह्य व्यक्ति को बैंक में नियुक्ति देने या स्थानान्तरण करने का कोई अधिकार नहीं है। दैनिक आधार पर कार्य करने वाले श्रमिक की सेवाए निरन्तर जारी रखना या न रखना बैंक की आवश्यकता पर आधारित है। प्रार्थी द्वारा दोनों शाखाों में समय पर अनियमित रूप से अस्थाई आधार पर शाखा परिसर में सफाई का कार्य किया जिसका समय समय पर निर्धारित की गई राशि के अनुसार भुगतान किया गया। प्रार्थी कभी भी बैंक का कर्मचारी नहीं रहा और न ही प्रार्थी एवं अप्रार्थी में नियोजक नियोक्ता का सम्बन्ध रहा। जब प्रार्थी बैंक का स्थाई/अस्थाई कर्मचारी नही रहा तो प्रार्थी बैंक से सेवा समाप्ति का प्रश्न ही नहीं उठता और न ही औद्योगिक विवाद अधिनियम,1947 की धारा 25–एफ, 25–जी एवं 25–एच के प्रावधान लागू होते है। प्रार्थी को बैंक के नियमानुसार या अधिनियम के प्रावधानों के अनुसार आरोप पत्र/नोटिस आदि देने का कोई अर्थ नहीं है। विशेष कथन में अप्रार्थी बैंक की ओर से निवेदन किया गया है कि भारत सरकार द्वारा विशिष्ठ एवं स्पष्ट दिशा निर्देश जारी किये गये है और उन दिशा निर्देशों की पालना किये बिना किसी भी स्थिति में किसी भी व्यक्ति की किसी भी पद पर नियुक्ति नहीं की जा सकती और न ही

शाखा प्रमुख के पास किसी भी व्यक्ति को किसी भी पद पर नियुक्त करने का अधिकार होता है। प्रार्थी को कभी भी बैंक में अनियमित व अस्थाई रूप से शाखा परिसर में सफाई का कार्य जैसी आकस्मिक सेवाए प्रदान करना उस व्यक्ति को बैंक सेवा में नियुक्ति का कोई हक प्रदान नही करता है। प्रार्थी अप्रार्थी बैंक का कर्मचारी नहीं रहा ना ही प्रार्थी व अप्रार्थी के बीच नियोजक नियोक्ता का सम्बन्ध नहीं है।

अप्रार्थी ने अपने जवाब में निवदेन किया है कि प्रार्थी द्वारा प्रस्तुत मांग पत्र खारिज फरमाया जावे ।

प्रार्थी की ओर से साक्ष्य में स्वयं का शपथ—पत्र प्रस्तुत किया। जिस पर अप्रार्थीगण ने प्रतिपरीक्षण किया। अप्रार्थी की ओर से साक्ष्य में गजेन्द्रसिंह परिहार सीनियर शाखा प्रबन्धक, बैंक आफ बडौदा का शपथ—पत्र प्रस्तुत किया। जिस पर प्रार्थी ने प्रतिपरीक्षण किया। प्रार्थी की ओर से प्रदर्श—1 से प्रदर्श—5 दस्तावेज की प्रतियां प्रस्तुत की गई। अप्रार्थी की ओर से जबाब नोटिस दिनांकित 7.2.2007 की प्रति प्रस्तुत की गई।

दोनों पक्षों की बहस सुनी गई पत्रावली का अवलोकन किया गया।

अधिसूचित विवाद के सम्बन्ध में यह उल्लेखनीय है कि प्रार्थी ने अपने मांग पत्र में इस बात का कोई उल्लेख नही किया है कि प्रार्थी कितने रूपये दैनिक मजदूरी पर रखा गया था और कितने समय दिन में कार्य करने के लिये रखा गया था उसको मजदूरी मासिक मिलती थी, साप्ताहिक मिलती थी। प्रार्थी ने अपने मांग पत्र में यह कही भी अंकित नही किया है कि उसने दिनांक 5.1.2007 को कार्य समाप्ति से पूर्व कलेण्डर वर्ष में 240 दिवस कार्य किया। उपरोक्त बातों का उल्लेख प्रार्थी सरूपसिंह ने अपने शपथ पत्र में भी नही किया है। प्रार्थी के विद्धान अधिवक्ता का तर्क है कि अप्रार्थी से उसके दिनांक दिनांक 3.2.2015 को एक प्रार्थना पत्र प्रस्तुत कर अप्रार्थी नियोक्ता से निम्नलिखित दस्तावेज तलब करने की प्रार्थना की गईः—

1. बैंक द्वारा मांगी गई सूचना (प्रार्थी की नियुक्ति के सम्बन्ध में)
2. बैंक आफ बडौदा शाखा मरूधर इण्ड. ऐरिया जोधपुर द्वारा जारी
   पत्र क्रमांक जोध/कार्मिक/110.2/दिनांक 13.2.2000
3. प्रार्थी द्वारा प्रस्तुत प्रार्थना पत्र दिनांक 13.12.2005
4. उपस्थिति रजिस्टर दिनांक 20.5.1996 से 12.12.2005 तक शाखा
   मरूधर इण्ड. ऐरिया, जोधपुर अस्थाई कर्मचारियों का
5. उपस्थिति रजिस्टर दिनाक 13.12.2005 से 5.1.2007 तक शाखा
   चान्दपोल शाखा जोधपुर अस्थाई कर्मचारियों का
6. वरिष्ठता सूची वर्ष 1996 से 2007 तक की ।

उक्त दस्तावेजात न्यायालय के आदेश दिनांक 15.11.2016 के तहत पेश करने के लिये आठ अवसर प्रदान किये गये जिसमें अप्रार्थी बैंक ने सिर्फ नोटिस का ही जबाब पेश किया। अन्य कोई दस्तावेजात पेश नहीं किये ।

प्रार्थी की ओर से प्रदर्श—1 स्वीपर के बारे में सूचना की फोटो प्रति प्रस्तुत की गई है जिसमें स्वीपर की जगह दिनांक 12.3.1996 से रिक्त होना बताया गया है। उक्त प्रार्थी सरूपसिंह द्वारा दिनांक 20.5.1996 का स्वीपर का कार्य करने की तिथि बताई गई है। इसमें प्रार्थी को स्केल वैजेज चपरासी के वेतन का आधा वेतन देना अंकित है। स्वीपर कार्य हेतु दी जा रही एक मुश्त राशि का उल्लेख नहीं है। यह सूचना मरूधर इण्ड. ऐरिया जोधपुर शहरी शाखा द्वारा बैंक को भेजी गई है। प्रार्थी द्वारा इसे नियुक्ति पत्र बताया जा रहा है जबकि प्रदर्श—1 को नियुक्ति पत्र नही माना जा सकता। दूसरा प्रार्थी का शपथ पत्र जो दिनांक 28.5.1996 को तस्दीक कराया गया है। जबकि प्रार्थी यह कहता है कि दिनांक 20.5.1996 को उसकी नियुक्ति हुई इसको भी नियुक्ति का आधार नही माना जा सकता। प्रदर्श—3 बैंक आफ बडौदा द्वारा जारी जोधपुर क्षेत्र की सभी शाखाओं को परिपत्र है जिसमें स्वीपर की स्थापना शाखाओं में करने बाबत दिनांक 13.9.2000 को जारी करना बताया है जिसमें यह अंकित किया गया है कि सरूपसिंह चार वर्ष से कार्यरत है और चपरासी के प्रथम वेतन का आधा उसको दिया जा रहा है। इस पर हांलाकि वास्ते बैंक आफ बडौदा के वरिष्ठ शाखा प्रबन्धक की मोहर तो अंकित है लेकिन हस्ताक्षर नहीं है, क्षेत्रीय प्रबन्धक के हस्ताक्षर अंकित हे। इससे यह जाहिर होता है कि प्रार्थी दिनांक 13.9.2000 को अप्रार्थी नियोजक के यहां चार वर्ष से कार्यरत था। प्रदर्श—4 ज्वाईनिंग रिपोर्ट है जो बैंक आफ बडौदा चान्दपोल के शाखा प्रबन्धक को प्रार्थी की ओर से दिया गया है उसमे उसका कहना है कि

मौखिक निर्देश से चान्दपोल शाखा के लिये उसको सफाई कार्य के लिये भेजा गया जिसको प्रार्थी स्थानान्तरण आदेश बता रहा है। मेरी राय में किसी भी शाखा प्रबन्धक को एक शाखा से दूसरी शाखा में स्थानान्तरित करने की शक्तियॉ प्राप्त नही हे। अतः इनसे यह नहीं माना जा सकता कि प्रार्थी का कोई स्थानान्तरण एक शाखा से दूसरी शाखा में किया गया हो। प्रदर्श–5 विधिक नोटिस है।

प्रार्थी की मौखिक साक्ष्य को देखे तो प्रार्थी सरूपसिंह ने अपने शपथ पत्र के कथनों को दोहराया है और यह कहा है कि उसकी नियुक्ति अप्रार्थी बैंक में दिनांक 20.5.1996 को स्वीपर के पद पर की गई थी और दिनांक 20.5.1996 से बैंक की शाखा मरूधर इण्ड.ऐरिया, बासनी, जोधपुर में प्रथम नियुक्ति हुई। नियुक्ति दिनांक से ही बैंक की बासनी शाखा में कार्य किया और उसके बाद दिनांक 12.12.2005 को अप्रार्थी बैंक की शाखा चान्द पोल जोधपुर में स्थानान्तरण मौखिक निर्देश पर कर दिया गया। दिनांक 13.12.2006 को बैंक में उसने अपना कार्यभार ग्रहण किया। इससे यह प्रकट होता है कि दिनांक 12.12.2005 से दिनांक 13.12.2006 तक एक वर्ष का कोई कार्य नहीं किया। प्रार्थी का कहना है कि दिनांक 5.1.2007 को उसे सेवा से पृथक कर दिया गया। अतः प्रार्थी के शपथ पत्र व मांग पत्र के अनुसार प्रार्थी ने दिनांक 5.1.2007 से पूर्व कलेण्डर वर्ष में 240 दिवस कार्य नहीं किया। प्रार्थी का कहना है कि उसकी वरिष्ठता सूची नहीं बनाई गई। जब प्रार्थी ने सेवा समाप्ति से पूर्व कलेण्डर वर्ष में एक वर्ष कार्य ही नही किया तो वह वरिष्ठता सूची में अपना स्थान पाने का हकदार नहीं रहता है न ही ऐसे मामले में औद्योगिक विवाद अधिनियम,1947 की धारा 25–एफ की पालना किया जाना आवश्यक है। जो व्यक्ति तथाकथित सेवा मुक्ति से एक वर्ष पहले से ही कार्य पर नहीं आरहा है तो ऐसे श्रमिक न्यायालय से कोई राहत प्राप्त करने के हकदार नहीं है।

प्रार्थी सरूपसिंह से किये गये प्रतिपरीक्षण में उसने नियुक्ति पत्र देना बताया है लेकिन पत्रावली में कोई नियुक्ति पत्र नही है। प्रदर्श–1 शाखा प्रबन्धक द्वारा भर कर देना कहता है । यह भी स्वीकार किया कि छपे हुये प्रारूप में बैंक आफ बडौदा अंकित नहीं है। प्रदर्श–3 में वरिठ शाखा प्रबन्धक के हस्ताक्षर नही है। यह भी स्वीकार किया है कि उसने मांग पत्र में वेतन या मजदूरी कितनी मिलती है यह अंकित नहीं है। शपथ पत्र में वेतन एवं मजदूरी का अंकन नही है। बासनी शाखा से चान्द पोल शाखा में भेजा गया इसका कोई लिखित आदेश नही है। यह भी स्वीकार किया है कि वह दैनिक रूप से काय्र करता था, वर्तमान में उसकी उम्र 45 वर्ष है। बैंक आफ बडौदा सरकारी बैंक है। बैंक में भर्ती के लिये नियम बनाये हुये हो तो पता नही। बैंक में शाखा के मैनेजर को किसी बाहरी व्यक्ति को नियुक्ति देने अथवा स्थानान्तरण करने का अधिकार हासिल है। यह भी स्वीकार किया है कि शाखा मैनेजर की पावर उसकी बैंक तक ही होती है। यह भी स्वीकार किया कि एक शाखा प्रबन्धक दूसरी शाखा में हस्तक्षेप नही कर सकता है। जब एक शाखा प्रबन्धक दूसरी शाखा के मामले में हस्तक्षेप नही कर सकता तो एक शाखा प्रबन्धक अपने कर्मचारी को दूसरी शाखा में स्थानान्तरित नहीं कर सकता। यह भी स्वीकार किया कि उसने ऐसे कोई दस्तावेज पेश नही किये है जिससे यह मालुम होता कि उसके द्वारा वर्ष 1996 से 2007 तक कार्य किया हो। नोटिस प्रदर्श–5 उसके अधिवक्ता द्वारा बैंक को दिया गया था जिसका जबाब बैंक द्वारा दिया गया जिसमें डेली वेजेज पार्ट टाईम स्वीपर का कार्य करना बताया है। इससे यह जाहिर होता है कि प्रार्थी बैंक का नियमित कर्मचारी नही था। प्रार्थी ने अपने पास 08 बीघा का खेत बताया जिस समय उसकी नौकरी लगी उस समय शैक्षणिक योग्यता 8वी पास थी वर्तमान में दसवी हो तो उसे पता नहीं । उसका कहना है कि एक माह चान्दपोल शाखा में काम किया था उसमें से उसे 5 दिन के पैसे नही मिले। इस सुझाव को गलत बताया कि उसने स्वयं ने ही काम पर आना बन्द कर दिया हो । यह स्वीकार किया कि उसने अपने मांग पत्र व शपथ पत्र में यह अंकित नहीं किया कि दिनांक 5.1.2007 के पश्चात! कब शाखा में गया और कब कार्य करने हेतु उपस्थित हुआ। इस प्रकार प्रार्थी ने अपने मांग पत्र, शपथ पत्र और उसके द्वारा दिये गये नोटिस में महत्वपूर्ण तथ्यों को छुपाया है। प्रार्थी ने यह नहीं बताया कि उसको कितनी मजदूरी मिलती थी। प्रार्थी ने यह भी नहीं बताया कि वह कितने घन्टे तक सफाई का काम करता था। प्रार्थी ने यह भी नही बताया कि सेवा समाप्ति से पूर्व 240 दिवस कलेण्डर वर्ष में उसने लगातार काम किया। प्रार्थी ने जिस शाखा में काम किया उस शाखा के प्रबन्धक को भी पक्षकार नहीं बनाया । प्रार्थी ने न तो कोइ नियुक्ति पत्र पेश किया और न ही नौकरी से निकालने का टरमिनेशन आदेश ही पेश किया। बैंक एक केन्द्र सरकार की संस्था है जिसमें कोई भी व्यक्ति नियमों के विरूद्ध किसी कर्मचारी को नहीं रख सकता। यह अवश्य है कि प्रार्थी ने अप्रार्थी नियोजक के यहां सफाई कर्मी का टेम्परेरी बेसिस पर काम किया इस बात की पुष्टि अप्रार्थी की ओर से प्रस्तुत गवाह गजेन्द्रसिंह परिहार सीनियर शाखा प्रबन्धक के बयानो से होती है। जिनके शपथ पत्र में यह कहा गया है कि प्रार्थी द्वारा बैंक की दोनों शाखाओं पर समय समय पर अनियमित रूप से अस्थाई आधार पर शाखा परिसर की सफाई का कार्य किया जिसका बैंक द्वारा समय समय पर निर्धारित राशि के अनुसार भुगतान किया गया। प्रार्थी कभी बैंक का कर्मचारी नहीं रहा। मात्र एक–डेढ घन्टे सफाई कार्य करके प्रार्थी चला जाता

था। प्रार्थी को किसी महिने 5 दिन तो किसी महिने में 10 दिन के लिये कार्य पर बुलाया जाता था। इस प्रकार प्रार्थी, अप्रार्थी की स्वीकृति के अनुसार नियमित कर्मचारी नहीं होकर आवश्यकतानुसार सफाई के कार्य करने के लिये एक पैड व्यक्ति था। जिसे दैनिक वेतन भोगी कर्मचारी की श्रेणी में नहीं रखा जा सकता। जिसका कोई रिकॉर्ड भी नहीं होता है। यदि अप्रार्थी द्वारा वांछित रिकॉर्ड ऐसे व्यक्ति के बारे में पेश नहीं किया गया है जो बैंक का नियमित कर्मचारी नही है और न ही स्थाई कर्मचारी है न ही वह दैनिक वेतन भोगी है तो इस आधार पर ऐसे रिकॉर्ड को पेश नहीं करने के लिये विभाग के विरूद्ध कोई प्रतिकूल धारणा नही ली जा सकती। प्रार्थी ने कहीं भी अपने मांग पत्र व शपथ पत्र में यह नहीं कहा है कि उसने कलेण्डर वर्ष में 240 दिवस लगातार काम किया। प्रार्थी स्वयं ही यह कहता है कि उसका स्थानान्तरण दिनांक 12.12.2005 को किया गया और एक वर्ष बाद दिनांक 13.12.2006 को चान्दपोल शाखा में कार्यभार ग्रहण करना बताता है। प्रार्थी एक वर्ष कहा रहा यह स्पष्ट नहीं किया गया है।

अप्रार्थी नियोजक के गवाह गजेन्द्रसिंह से किये गये लम्बे प्रतिपरीक्षण में भी उसका कहना है कि वे बैंक आफ बडौदा की चान्दपोल शाखा में कभी कार्यरत नहीं रहे। इस केस से सम्बन्धित रिकॉर्ड देखकर आया है। बैंक का रिकॉर्ड शपथ पत्र दिये जाते समय देखा। प्रार्थी से सम्बन्धित रिकॉर्ड न्यायालय में पेश किया या नही याद नहीं। प्रार्थी ने बैंक में कब से कब तक कार्य किया इसकी उसे जानकारी नहीं । चूंकि प्रार्थी उसकी बैंक का कर्मचारी नही था इसलिये उसका चान्द पोल शाखा में स्थानान्तरण करने का प्रश्न ही नहीं उठता। प्रार्थी ने अन्तिम बार जनवरी, 2007 में काम किया। प्रार्थी उनका कर्मचारी नहीं था इसलिये उसका काम लेना या नही लेने का प्रश्न ही नहीं उठता। यह स्वीकार किया कि वर्ष 2007 के बाद निर्धारित प्रक्रिया अपनाते हुये कर्मचारियों की नियुक्ति की । प्रार्थी को सूचना देने बाबत कोई प्रावधान नहीं है। चान्द पोल शाखा में कुल कितना स्टाफ है नहीं बता सकता। प्रार्थी को अन्तिम बार कितना वेतन दिया उसे पता नही । प्रदर्श—3 उनकी बैंक द्वारा जारी किया हो तो उसे पता नहीं क्योंकि इस पर हस्ताक्षर नहीं है। प्रदर्श—4 पर उनकी बैंक की सील पर हस्ताक्षर है। बासनी व चान्दपोल में कितने—कितने स्वीपर है उसे पता नही। बैंक प्रार्थी को इसलिये नही रख सकता क्योंकि बैंक में नियोजन निर्धारित प्रक्रिया से होता है। बैंक में कितने पद रिक्त है नही बता सकता। इस प्रकार अप्रार्थी के इस गवाह से प्रार्थी द्वारा किये गये प्रतिपरीक्षण में यह बात नहीं आई है कि गवाह ने यह स्वीकार किया हो कि प्रार्थी सरूपसिंह ने तथाकथित सेवा समाप्ति दिनांक 5.1.2007 से पूर्व कलेण्डर वर्ष में 240 दिवस कार्य किया हो। प्रार्थी ने न तो अपने वेतन का विवरण दिया है और न ही अपनी उपस्थिति का कोई विवरण दिया है और अन्य किसी व्यक्ति गवाह को पेश किया जिसने प्रार्थी को अप्रार्थी बैंक में स्वीपर का लगातार कार्य करते हुये देखा हो। अतः प्रार्थी ने उसके और अप्रार्थी के बीच नियोजित—नियोजक का सम्बन्ध होना प्रकट नहीं हुआ। क्योंकि प्रार्थी का नियुक्ति अधिकारी अप्रार्थी सहायक महाप्रबन्धक बैंक आफ बडौदा नही है जिनके द्वारा नियुक्त किया जाना बताया है उन्हें पक्षकार नहीं बनाया है।

अतः मेरी राय में प्रार्थी के मामले में सेवासमाप्ति से पूर्व औद्योगिक विवाद अधिनियम, 1947 की धारा 25—एफ का कोई उल्लंघन होना प्रकट नहीं होता। प्रार्थी को दिनांक 5.1.2007 को सेवामुक्त नहीं किया गया है बल्कि वह स्वयं ही कार्य पर उपस्थित नहीं हुआ। अतः प्रार्थी कोई राहत पाने का अधिकारी नहीं है।

—:अधिनिर्णयः—

अतः यह अधिनिर्णय किया जाता है किः—

1. प्रार्थी के मामले में सेवासमाप्ति से पूर्व औद्योगिक विवाद अधिनियम,1947 की धारा 25—एफ का कोई उल्लंघन नहीं हुआ। प्रार्थी अप्रार्थी के बीच नियोजित—नियोजक का सम्बन्ध नहीं है।
2. प्रार्थी कोई राहत पाने का अधिकारी नहीं है।

यह आदेश मेरे द्वारा लिपिबद्व करवाया जाकर आज दिनांक 19.12.2017 को खुले न्यायालय में हस्ताक्षर कर उद्घोषित किया गया।

अजय कुमार शर्मा—1, न्यायाधीश

नई दिल्ली, 21 मई, 2018

का.आ. 849.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक, केंद्रीय जल संस्थान एक्वाकल्चर, भुवनेश्वर (उड़ीसा) एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ सं. 16/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02.04.2018 को प्राप्त हुआ था।

[सं. एल-42011/36/2015-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 21st May, 2018

S.O. 849.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID No. 16/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the employers in relation to the Director, Central Institute of Freshwater Aquaculture, Bhubaneswar (Orissa) and their workmen, which was received by the Central Government on 02.04.2018.

[No. L-42011/36/2015-IR(DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present: Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 16/2015

Date of Passing Award – 8th March, 2018

Between:

The Director,
Central Institute of Freshwater
Aquaculture, Po. Kausalyagang,
Bhubaneswar (Orissa) – 751 002. …1st Party-Management

(And)

The General Secretary,
CIFA Shramik Sangh,
At. & Po. Kausalyaganga,
Bhubaneswar (Orissa) – 751 002. …2nd Party-Union

Appearances:

Shri I. Muduli, Asst. Admn. Officer	…	For the 1st Party-Management
Shri D.N. Mallik, General Secretary	…	For the 2nd Party-Union

AWARD

The Award is directed against a reference with the schedule "Whether the concerned workmen in the instant case are to be paid bonus (adhoc bonus) or not? If not, then the reason for the same." made by the Government of India, in the Ministry of Labour vide its letter No. L-42011/36/2015-IR (DU), dated 07.05.2015 in exercising its authority by clause (d) sub-clause 2 of Section 10 of the Industrial Disputes Act (herein-after referred to as "The Act") since an alleged industrial dispute arose between the management of Central Institute of Freshwater Aquaculture and their workman.

2. The case of the 2nd party-Union in narrow compass giving rise to the reference is that the Management namely CIFA, Kausalayaganga, Bhubaneswar under the control of ICAR, Govt. of India, New Delhi has started its function at

Kausalayaganga, Bhubaneswar from the year 1997 and it has developed freshwater aqua fishiculture and horticulture for the purpose of research and for fulfilment of human wants. It has been supplying fish and fish product to the local market for its consumption and it is an "Industry" as defined under section 2(j) of the Act. Near about 400 permanent, temporary workers and contract labourers are working under the Management. Pursuant to the ICAR Order/File No. 9(8)/90CDM(A & A), dated 29.10.1996 of the Ministry of Finance and Expenditure O.M. No. F. 14(1)/Estt. (Cood.) 96, dated 17.10.1996 it was decided by the Government of India to provide adhoc linked Bonus to all categories of labourers/employees. As the claims of the workmen were not taken into consideration by the 1st Party-Management, a dispute was raised giving rise to I.D. Misc. Case bearing No. 218/1997 in the Labour Court, Bhubaneswar, Odisha. The said Misc. Case was disposed of with an order that the workmen who have worked for at-least 240 days for each year for three years or more will be eligible for adhoc Bonus in the form of non-productivity linked Bonus scheme as per the Government of India Notification dated 16.9.1996. 34 numbers of workmen out of 78 were paid Bonus in the years 1997-98 and payment of such Bonus continued till the accounting year 2000. It is the allegation of the 2nd party-Union that after the year 2000 no other workmen who have completed 240 days of continuous work in a calendar year for three years has been provided with such Bonus inspite of the specific order of the Hon'ble Court as well as the order of ICAR, Government of India, New Delhi. In the meanwhile 110 numbers of casual workmen working under the 1st Party-Management for the last several years are eligible for the said Bonus. But, the Management is avoiding to make payment of such Bonus to them on certain frivolous reasons. In its rejoinder the 2nd party-Union has refuted the stand of the Management that the disputant workmen are contract labour. According to it, the disputant are working directly under the Management and as such, they are eligible for the Bonus as per the order of the Hon'ble Labour Court. Hence the dispute.

3. In its written statement the Management has challenged the maintainability of the reference contending that the institution does not come with the purview of "Industry" as defined under section 2(j) of the Act on account of the same being a research Unit. That apart, it is the stand of the Management that three categories of labourers are working in the institution. Category-I are casual labour confirmed with temporary status and Category-II casual labours not confirmed with temporary status but drawing 1/30th basic pay are getting benefits of adhoc Bonus. Category-III are contractual labours working under the labour contractor, though drawing the pay and allowances, are not eligible for the Bonus. Hence, the workmen enlisted in the reference being contractual and contract labourers are not entitled to Bonus as per the DoPT guidelines and as such the claim of the 2nd party-Union has no merit.

4. On the aforesaid pleadings of the parties the following issues have been settled for just and proper adjudication of the dispute.

I S S U E S

1. Whether the concerned workmen in the instant case to be paid Bonus (adhoc bonus) or not?

2. If not, then the reasons for the same?

5. To substantiate its claim the 2nd party-Union has examined its General Secretary as W.W.-1 and filed copy of the conciliation failure report dated 16.3.2015, copy of the letter of the Union to the R.L.C.(C) dated 7.7.2014, copy of the ICAR letter dated 29.10.1996 and dated 7.10.2014, copy of the letter addressed to the Director, CIFA dated 22.1.2015, copy of the award passed in I.D. Case No. 22/2000 and copy of the award passed in I.D. Case No. 218/1997, which are marked as Ext.-1 to Ext.-6, whereas the Management did not like to adduce any evidence except advancing its argument against the claim.

F I N D I N G S

6. The first issue raised by the Management is that the I.D. Act is not applicable to it as it is not coming under the purview of "Industry" as defined under section 2(j) of the Act. To counter the same the 2nd party-Union has relied upon the judgement of our own High Court reported in 2012-III-LLJ-331 (Oris). Undisputedly in the case of Indian Council of Agricultural Research between P.O., CGIT-cum-Labour Court, Bhubaneswar & Others as reported above it has been held by the Hon'ble High Court of Orissa that a research Institute engaged in systematic activity with organized co-operation of employer and employee for production/distribution of goods and service will be an industry under section 2(j) of the Act. That being the settled principle and position of law the objection raised by the Management towards maintainability of the reference has no force and accordingly the issue is answered in favour of the 2nd party-Union.

7. The other contention for not releasing the Bonus in favour of the disputant is that they being contract labourer are not entitled to the Bonus as the office Memorandum dated 16th Sept. 2014 of Ministry of Finance, Department of Expenditure does not mandate so. It is the pleading and evidence of the Union that the disputants are working directly under the supervision and control of the 1st Party-Management and the Management having failed to bring forth any document to establish that the services of the disputant have been hired through contractor, they are to be treated as casual labour working under the Management. In this regard the assertion of the witness has not been demolished. Not a single scrap of paper is filed to prove that the disputants are contract labour and they are receiving their wages from the contractor. It cannot be over-sighted that engagement of the disputants in the establishment of the Management to do

labour work has not been seriously challenged. Hence, it can safely be presumed that the disputants are casual labours. The Management has not refuted the assertions of the disputants that they have worked for more than 240 days continuously in a calendar year for three consecutive years. The office memorandum issued by the Ministry of Finance (Ext.3) mandate that the casual labours who have worked in offices following a 6 days week for at least 240 days for each year for 3 years or more (206 days in each year for 3 years or more in the case of offices observing 5 days week), will be eligible for this Non-PLB (Adhoc Bonus) Payment. In that view of the matter and the reasons discussed above, the disputants are clearly eligible for the adhoc Bonus as per the Government of India circular. Refusal of adhoc Bonus to them is undoubtedly unjustified. Therefore, the 1st Party-Management is directed to release adhoc bonus in favour of the disputants as per the circulars of the Government of India within three months of the publication of the award failing which the disputants are entitled to interest at the rate of 8% per annum.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 21 मई, 2018

का.आ. 850.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, आयुक्त, उत्तर दिल्ली नगर निगम एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, दिल्ली सं. 1 के पंचाट (संदर्भ संख्या 234/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.04.2018 को प्राप्त हुआ था।

[सं. एल-42011/136/2015-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 21st May, 2018

S.O. 850.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 234/2015) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the Commissioner, North Delhi Municipal Corporation and their workmen, which was received by the Central Government on 25.04.2018.

[No. L-42011/136/2015-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No.1, ROOM No.511 , DWARKA COURT COMPLEX, SECTOR 10, DWARKA, DELHI

ID No. 234/2015

Shri Jaipal Singh S/o Tilak Ram, represented by
MCD General Mazdoor Union,
Room No.95, Barrack No.1/10,
Jam Nagar House, Shah Jehan Road,
New Delhi …Workman

Versus

The Commissioner,
North Delhi Municipal Corporation,
4th Floor, Civic Centre, Minto Road,
New Delhi 110 002 …Management

AWARD

Reference under Section 10 sub-section (2A) of the Industrial Disputes Act, 1947 (in short the Act) was received from the Central Government, Ministry of Labour and Employment vide it orders No.L-42011/136/2015-IR(DU) dated 02.11.2015 for adjudication of an industrial dispute with the following terms:

'Whether the action of the management of East Delhi Municipal Corporation, in not promoting Shri Jaipal Singh S/o Shri Tilak Ram as Chaudhary in the pay scale of Rs.3050-4590 revised from time to time with effect from 01.04.1989 is fair and legal? If not, to what relief the workman is entitled to and from which date?'

2. Both the parties were put to notice and the workman Shri Jaipal Singh filed his statement of claim, wherein it is alleged that he has been allotted work of Chaudhary with effect from 01.04.1989 by the competent officers of Horticulture Department and was posted under Karol Bagh Horticulture Zone and was later on transferred to Civil Lines Zone with effect from 19.06.2009 where he is performing his duties as acting Chaudhary. However, he has been denied pay scale of Chaudhary, revised from time to time. The workman has got payment of salary in the lower pay scale of mali, i.e. Rs.750-940 instead of Rs.950-15000 revised from time to time and has been denied the scale of Chaudhary, effect from 01.04.1989. Action of the management is alleged to be illegal & unjustified and amounts to unfair labour practice. Duties of mali is presently of an unskilled workman whereas duties of Chaudhary is skilled in nature belonging to Group C category of employees.

3. It is also averred in para 9 of the statement of claim that Hon'ble High Court, Delhi, in the matter of Jai Chand vs Municipal Corporation of Delhi (CW 6514/2001) has disapproved the non-payment of wages for those malis who are working on the post of Chaudhary vide its judgement dated 02.05.2003. After the above judgement of the Hon'ble Court, Municipal Corporation of Delhi (Horticulture Department) has also issued order No.ADC(Hor.)/AO(Hort)/DA-VII/05/457 dated 04.03.2005 (Annexure B). There is also reference to the judgment of Division Bench of High Court of Delhi in the matter of Municipal Corporation of Delhi vs. Sultan Singh wherein also plea of the MCD regarding non-payment of wages of Chaudhary to malis who are doing working of Chaudhary, was turned down by the Hon'ble High Court in judgement dated 27.07.2011.

4. It is also averred that similar situated workmen who were performing duty of Chaudhary were granted pay scale of Chaudhary from the date when they were asked to perform duty on the higher post and management has challenged the order dated 27.07.2011 of the Labour Court in the matter of MCD vs Sultan Singh as well as before the Hon'ble Supreme Court of India by Special Leave to Appeal No.S20069/2011 and the plea by MCD has been dismissed by both, before the High Court as well as the Hon'ble Supreme Court. Workman, herein, is also similarly situated and doing work of Chaudhary and as such, entitled to same benefits. Finally, it is prayed that an award may be passed in his favour.

5. Management has demurred claim of the workman by taking preliminary objections, inter alia, present dispute not being an industrial dispute as there is no espousal & no demand notice has been served upon the management, claim being misconceived, claim being stale etc. In para 5 of the preliminary objection, it is admitted that the workman herein was engaged on the post of mali on muster roll basis and was later on regularized on the same post of mali. There is prescribed procedure for promotion to the post of Garden Chaudhary and there must be sanctioned/vacant post of Garden Chaudhary to which the workman can lay claim when he has passed trade test conducted by the department. Claimant has not passed the said trade test nor is he performing duties of Garden Chaudhary. Management, on merits, have denied material averments. It is also denied that the workman herein was performing duties of Chaudhary with effect from 01.04.1989. Accordingly, it is prayed that claim of the workman herein is liable to be dismissed, being devoid of merits.

6. Against this factual background, based on pleadings of the parties, this Tribunal vide order dated 07.08.2016 framed the following issues:

(i) Whether reference is not maintainable, in view of the various preliminary objections?

(ii) As in terms of reference

7. Claimant, in support of his case, examined himself as WW1 and Shri B.K. Prasad as WW2 and tendered in evidence their affidavit Ex.WW1/A & Ex.WW2/A and also tendered in evidence documents Ex.WW1/1 and Ex.WW2/1 to Ex.WW2/4 respectively. Management, in order to rebut the case of the claimant, examined Shri Harbir Singh, Assistant Director (Horticulture) as MW1, whose affidavit is Ex.MW1/A and also relied on documents Ex.MW1/1 to Ex.MW1/4.

8. I have heard Shri B.K. Prasad, A/R for the claimant and Shri Nitin Soam, A/R for the management.

Findings on Issue No.(i)

9. It is clear from the preliminary objections taken in the written statement by the management that the management has raised objection that no demand notice has been served upon the management nor the MCD General Mazdoor Union has any locus standi to raise the present dispute as the union is not a recognized union of the management. To my mind, there is no requirement of law that a dispute can be raised only by a recognized union. In this regard, it is appropriate to refer to the judgement of the Hon'ble Apex Court in the case of State of Bihar Vs. Kripa Shankar Jaiswal (AIR 1961 (2) SC Report 1) wherein also objection was taken on behalf of the management that the union was not a registered under the Trade Union Act on the date of the settlement and said plea was rejected by observing as under:

> 'Held, that for a dispute to constitute an industrial dispute it is not a requisite condition that it should be sponsored by a recognized union or that all the workmen of an industrial establishment should be

parties to it. A settlement arrived at in course of conciliation proceedings falls within Section 18(3)(a) and (d) of the Industrial Disputes Act and as such binds all the workmen though an unregistered union or only some of workmen may have raised the dispute. The absence of notice under Section 11(2) by the Conciliation Officer does not affect the jurisdiction of the conciliation officer and its only purpose is to apprise the establishment that the person who is coming is the conciliation officer and not a stranger. Any contravention of Section 12(6) in not submitting the report within 14 days may be a breach of duty on the part of the conciliation officer ; it does not affect the legality of the proceedings which terminated as provided in Section 20(2) of the Act.

10. Equally merit-less is the plea taken by the management that the present dispute is not sponsored or espoused by substantial number of workmen. It is fairly settled position in law that even non-espousal of a case by the union would not deprive the workman of the relief to which the workman is otherwise entitled under the law. Such view appears to have been taken in the case of Nazrul Hassan Siddiqui vs. Presiding Officer, Industrial cum Labour Court Bombay (1997) Lab.I.C. 1807. In the above cited case also contention was raised by the management that the dispute dies not fall within the definition of 'industrial dispute' and the same has not been referred or supported by substantial section of workmen. High Court rejected the plea of the management by placing reliance upon the decision of the Hon'ble Supreme Court in the case of Associated Cement Companies Ltd. (AIR 1960 SC 777), which it was observed as under:

> 'We have already noticed that an industrial dispute can be raised by a group of workmen or by a union even though neither of them represent the majority of the workmen concerned; in other words, the majority rule on which the appellant's construction of Section 19(6) is based is inapplicable in the matter of the reference under Section 10 of the Act. Even a minority group of workmen can make a demand and thereby raise an industrial dispute which in a proper case would be referred or adjudication under Section 20.'

11. In view of the ratio of the judgement discussed above, it is clear that espousal of a dispute by the union is not sine qua non for adjudication of such dispute in terms of Section 10 of the Act. Consequently, this issue is decided in favour of the workman and against the management.

Findings on Issue No.(ii)

12. Now, the main issue which requires determination in the case in hand is whether the workman herein is entitled for grant of pay scale of 3050-4590 as revised from time to time alongwith consequential benefits. It is clear from pleadings of the parties that initially the workman herein was appointed as mali on daily wage basis and later on he was regularized on the same post of mali. This fact has been admitted even by the management in para 5 of the preliminary objections.

13. There is also ample evidence on record that the workman herein was performing duty as officiating Chaudhary. It is clear from perusal of office order dated 27.11.2008 Ex.WW1/1 that that name of the claimant finds mention at serial No.1 in the list of acting chaudharies attached with the letter and in the column *'Karyavahak Chaudhary ke roop me kab se karya kar raha hai'*, it is mentioned 'April 1989. Claimant, in order to prove his case, has tendered in evidence his affidavit Ex.WW1/A, wherein material averments contained in statement of claim has been reiterated. It is specifically alleged in the affidavit that he was doing work of acting Chaudhary with effect from 01.04.1989. Claimant, in order to prove his case, has tendered in evidence his affidavit Ex.WW1/A, wherein material averments contained in statement of claim has been reiterated. It is specifically alleged in the affidavit that he was doing work of acting Chaudhary with effect from 01.04.1989. There are also averments in his affidavit that one Shri Jai Chand has also been granted pay scale of Chaudhary by the management of MCD and Sultan Singh and others vs. MCD, who were doing work of acting Chaudhary , vide judgement of the Hon'ble High Court, i.e. in the case of MCD vs. Sultan Singh & others and necessary orders for implementation of the said judgement were issued by MCD.

14. There is no merit in the stand taken by the management in its reply, that the workman here is not entitled for promotion to the post of Chaudhary inasmuch as he has not appeared in the trade test conducted by the department. To my mind, this plea is devoid of any merit inasmuch as similarly situated other workers who were performing duties of Chaudhary, i.e. acting Chaudhary have been granted pay scale of Garden Chaudhary after judgement dated 27.07.2011 rendered by the Hon'ble High Court in the case of MCD vs. Sultan Singh as well as MCD vs. Mahipal(WP 5550 of 2010). Operating portion of the judgement in Sultan Singh (supra) of the Hon'ble Division Bench is as under:

> "28. Considering the entire facts and circumstances it is apparent that the claim of the respondents have always been that they should be paid the difference in pay of Mali/Chowkidar and the Garden Chaudhary as they were made to work on the post of Garden Chaudhary whereas the petitioner had first denied that they worked as Garden Chaudharies, then took the plea that the Assistant Director (Horticulture) was not competent to ask the respondents to work as Garden Chaudharies and that the respondents cannot be appointed to the post of Garden Chaudharies in accordance with the recruitment rules. There is no doubt that respondents are not claiming appointment to the post of Garden Chaudharies on account of having worked on ad-hoc basis on the post of Garden Chaudhary contrary to rules or that some of them not having the requisite qualifications are entitled for relaxation.

29. In the entirety of facts and circumstances therefore, the learned counsel for the petitioner has failed to make out any such grounds which will impel this Court to exercise its jurisdiction under Article 226 of the Constitution to set aside the orders of the Tribunal dated 29th January, 2010 and 7th October, 2010 as no illegality or un- sustainability or perversity in the orders of the Tribunal has been made out.

30. The writ petition is, therefore, dismissed. Parties are left to bear their own cost."

15. It is further clear that SLP was also filed by MCD before the Hon'ble Apex Court by special leave application No. S20069/2011 MCD vs. Sultan Singh and others which was also dismissed as withdrawn vide order dated 09.04.2012. It is further clear that the Hon'ble High Court in Sultan Singh case strongly deprecated the stand taken by the management that the workmen were not possessing requisite qualification or have not qualified the test etc. It was clarified that since the workmen were discharging duties to the post of Garden Chaudhary, as such, workmen were entitled for the salary of Garden Chaudhary and competent authority need not look into anything else except the fact that the workman had worked as Garden Chaudhary. Therefore, stand taken by the management that the workman herein could not qualify the test conducted by the department is without any merit and has no relevance so far as question of grant of salary against the post of Garden Chaudhary is concerned.

16. It is not out of place to mention here that even if the claimant herein was not a party in Sultan Singh case referred above, judgement of the Hon'ble High Court is binding on the management and management is required to implement the same in letter and spirit and the same is judgement in rem, and all similarly situated workmen are required to be accorded the benefit of the said judgement of the Hon'ble High Court, which have become final. There is no question of even plea of delay and laches when management had not led any evidence to prove the same. The Hon'ble High Court has decided an abstract proposition of law, i.e. a mali who is performing duty as officiating/acting Chaudhary is entitled to the salary/wages of Chaudhary. Law is fairly settled that if a person is working on a higher post, on adhoc or temporary basis, even such workman is entitled to salary/wages of higher post, unless rules or regulations specifically provides otherwise. I find support to this view from Secretary vs. Lieutenant Governor Port Blair (1998 Lab.I.C. 598), yet in another case, Hon'ble Apex Court while considering that question of grant of benefits to similarly situated employees who were not party to the writ petition or lis in the case of State of Uttar Pradesh vs. Arvind Kumar Srivastava (2015) 1 SCC 347 observed as under:

"The moot question which requires determination is as to whether in the given case, approach of the Tribunal and the High Court was correct in extending the benefit of earlier judgment of the Tribunal, which had attained finality as it was affirmed till the Supreme Court. The legal principles that can be culled from the judgments, cited both by the appellants as well as the respondents, can be summed up as under:

(1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

(2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

(3) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularization and the like (see K.C. Sharma & Ors. v. Union of India (supra). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence."

17. In view of the discussions made herein above, it is held that the workman herein, Shri Jaipal Singh is entitled to the pay scale of Garden Chaudhary with effect from 01.04.1989 and as a corollary, management is liable pay the difference of wages of mali vis-a-vis Garden Chaudhary from the date when the workman herein was performing duties and functions of Garden Chaudhary. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

A. C. DOGRA, Presiding Officer

Dated: March 16, 2018

नई दिल्ली, 21 मई, 2018

का.आ. 851.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, महाप्रबंधक, बीएसएनएल, गाजियाबाद एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, दिल्ली सं. 2 के पंचाट (संदर्भ संख्या 26/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.03.2018 को प्राप्त हुआ था।

[सं. एल-40012/109/2012-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 21st May, 2018

S.O. 851.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 26/2013) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the General Manager, BSNL, Ghaziabad and their workmen, which was received by the Central Government on 06.03.2018.

[No. L-40012/109/2012-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No.2, ROOM No.512, DWARKA COURT COMPLEX, SECTOR 10, DWARKA, DELHI

ID No.26/2013

Shri Bijender Singh S/o Shri Ganga Prasad,
House No.12, Gali No.1, Sewa Nagar,
Ghaziabad, Uttar Pradesh …Workman

Versus

The General Manager,
Bharat Sanchar Nigam Limited,
Raj Nagar,
Ghaziabad, Uttar Pradesh …Management

AWARD

In the present case a reference was received from Ministry of Labour and Employment vide letter No. L-40012/109/2012-IR(DU) dated 07.03.2013 under clause (d) of sub-section (1) and Section (2A) of Section 10 of Industrial Disputes Act, 1947(in short the Act) for adjudication of an industrial dispute, terms of which are as under:

'Whether the action of the management of BSNL, Ghaziabad in terminating the services of workman Shri Bijender Singh, Driver, with effect from 30.04.2011 without complying the provisions of the ID Act is unjustified. If so, to what relief the workman is entitled to?'

2. Both parties were put to notice and Shri Bijender Singh (in short the claimant) filed statement of claim with the averments that he was engaged as driver on 01.09.2002 in BSNL (in short the management) under Shri Dehel Singh Tomar, SDO(Phones) Patel Marg, Ghaziabad on a monthly salary of Rs.3000.00. Work of the claimant was satisfactory and his services were illegally terminated on 30.06.2003 by the management without serving any notice.

3. It is the case of the claimant that he approached the Conciliation Officer under Section 2-A of the Act and management agreed to take back the claimant in service on the assurance that the claimant would withdraw his case.

Thereafter, the claimant joined back on 20.10.2003 with the management after withdrawing his case . Claimant was assigned work Peon continuously upto 30.04.2005. On 01.05.2005, the claimant was assigned work of driver under Shri U.B. Shakya, SDO, Govindpuram where he worked upto 15.07.2006. He regularly drove the care of SDO(Phones) of the management. Thereafter, he was shifted to drive the vehicle of Shri A.N. Singh, SDO(phones) where he continuously worked upto 08.03.2007. Claimant was transferred to Shri V.P. Singh, SDO (Phones), Govindpuram, where he worked upto 31.12.2008. Thereafter claimant was directed to report and drive for Shri Jitender Singh Bagela, JTO, Govindpuram where worked continuously upto 24.01.2009. Lastly he was directed to work under Shri Subhash Chand Tyagi, SDO(Phones), Govindpuram where he worked upto 30.04.2011. While working under different SDOs, payments have been made by the SDO(Phones) every day. One of the payments of the SDO(Phones), for ready reference , is Annexure P-2. Thus, the claimant has been continuously working from 2002 to 30.04.2011 and in each year, he has completed 240 days, there was no complaint against the claimant from any quarter and his services have been suddenly terminated on 30.04.2011 and management has appointed on Shri Bhudatt Sharma to drive the car driven by the claimant vide letter dated 05.05.2011. Since termination of the claimant is in violation of provisions of the Act, as the claimant has worked for more than 240 days in each calendar year preceding his termination, as such his termination is both illegal and void under the law. The claimant has also taken up the matter with the Assistant Labour Commissioner, Dehradun. His claim was opposed by the management by filing reply. Thereafter, matter was placed before the Conciliation Officer, but it failed. Finally, reference in the above matter was made by the appropriate Government to this Tribunal for adjudication of the industrial dispute.

4. Claim was resisted by the management taking various preliminary objections that there was no relationship of employer and employee between the claimant and the management and claimant has no cause of action against the management. It was also alleged that the claimant also does not fall within the definition of 'workman' as defined under section 2(s) of the Ac. On merits, all the averments made by the claimant in the statement of claim have been denied by the management. It was also denied that the claimant was engaged by the management at any point of time. It is also denied that he was engaged as deiver on 01.09.2002 under SDO(Phones) Shri Dehel Singh Tomar. It is alleged that management has been hiring private vehicles from different contractors who provide taxi service. Claimant may be one such driver. Claimant might have worked with Shri Dehel Singh Tomar as his personal driver and management has nothing to do with that.

5. Rejoinder was filed by the claimant herein, wherein he has reasserted the averments made in the statement of claim and denied the material averments made in the statement of defence.

6. Based on the pleadings of the parties, this court vide order dated 27.01.2014, framed the following issues:

(i) Whether the action of the management of BSNL, Ghaziabad in terminating the services of the workman Shri Bijender Singh, Driver, with effect from 30.04.2011 without complying the provisions of the ID Act is unjustified. If so, its effects.

(ii) If not, what relief the workman is entitled to?

(iii) Whether employer and employee relation exists. If so, its effects.

7. Claimant, in order to prove the case against the management, examined himself as WW1 and his affidavit is Ex.WW1/A. He relied on documents Ex.WW1/1 to Ex.WW1/4. It is pertinent to note here that there is no cross examination of the claimant. Management, in fact, was given several opportunities by this Tribunal to examine the claimant. However, the management failed to cross examine the claimant and as such, right of the management to cross examine the claimant was closed vide order dated 05.07.2016. Management has also not adduced any evidence in the present case so as to rebut the case of the claimant.

Findings on issue no.(i), (ii) and (iii)

8. At the outset, it was stated by the claimant that his name is Vijendra Singh and it has been wrongly mentioned in the reference as Bijender Singh. He has filed copy of his aadhar card to support his contention.

9. Issue No.(i), (ii) and (iii) are being taken up together for the purpose of discussion as the same are inter-linked and can be conveniently disposed of. It is clear from the averments made in the statement of claim as well as the affidavit that the claimant herein was taken in service by the management on 20.10.2003 and thereafter the claimant continued to serve under different SDOs. It was on 01.05.2005 that the claimant was assigned work as driver under SDO Shri UB Shakya, Govindpuram Ghaziabad. Thereafter he was shifted to drive the vehicle of Shri A.N. Singh, SDO, Govindpluram Ghaziabad upto 08.03.2007, thereafter he was shifted to drive Shri V.P. Singh, SDO. Govindpuram whre worked upto 31.12.2008. He has also served Shri Jitender Singh Bagela, JTO, Govindpuram, Ghaziabad upto 24.01.2009 and finally he was directed to work with Shri Subhash Chand Tyagi, SDO(Phones) Govindpuram, Ghaziabad, where he worked upto 30.04.2011 when his services were terminated. It is clear from Annexure P-3 that Shri Bhudatt Sharma was

transferred and posted under SDO(Phones) Nehru Nagar, Ghaziabad. Learned A/R for the claimant stated that in fact Shri Bhudatt Sharma has been appointed in place of the claimant herein who was previously engaged as driver under various SDOs mentioned above.

10. It is also clear from Ex.WW1/1 (colly) comprising of various memos dated 02.09.2002, 04.09.2002, 06.09.2002, 03.09.2002, 09.09.2002, 11.09.2002, 13.09.2002 16.09.2002 etc. that the claimant has got filled diesel in the vehicle which he was driving and the same bears signatures of the SDO(Phones), Ghaziabad.

11. There is another document Ex.WW1/2 which is cash memo bearing names of various parts of the vehicles which is also suggestive of the fact that for repair of vehicles, said parts have been used and during that period he has served the management as driver. Cash memo also bears signatures of the SDO(Phones), who has sanctioned the amount.

12. Ex.WW1/3 which is in the name of SDO(Phones) Govindpuram which shows that vehicle of SDO was being taken for filing on various dates and there is mention of petrol. All these bills have been approved by SDO concerned, which is clearly suggestive of the fact that the claimant was not engaged as driver in personal capacity by SDO(Phones) but he was driving the vehicle for the management. Similarly Ex.WW1/4(colly) shows that the vehicle No.UP14-D-5800 being driven by the claimant was getting filled petrol and mobil oil. These documents bear signatures of the claimant as well as the DEP(O/D) as well as SDO(Phones)

13. It is the case of the management that the claimant was never in the employment of the management and that he was engaged in personal capacity. There is no merit in the contention of the management that since the claimant was engaged in personal capacity or that he was a casual daily wager, as such, he does not fall within the definition of 'workman'. In this regard, it is appropriate to to the case of ***Devender Singh Vs. MC Sanaur, AIR 2011 SCC 2532,*** wherein Hon'ble Apex Court had the occasion to deal with the meaning of the expression 'workman' as used in Section 2(s) of the Act. In para 13 and 14 of the judgement, while refuting the contention of the management that casual or temporary or part time worker do not fall within the definition of 'workman' observed as under:

> 'The source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s)of the Act.
>
> The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only a person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.

14. Thus, it is clear from resume of evidence on record that the claimant was admittedly engaged as driver and was driving vehicle of the management. Admittedly, no show cause notice or one months' notice in lieu thereof was given to the claimant.

15. It is now well settled position in law that before ordering termination of services of a workman, management is required to serve one month notice or one month salary in view of such notice failing which action of the management would be termed as totally arbitrary and illegal. In the case on hand also, admittedly neither one months' notice was served upon the claimant nor any salary in lieu of such notice was paid to the claimant. In such a situation, action of the management in terminating services of the claimant herein orally cannot stand the scrutiny of law, as such, the same is held to be totally illegal and void.

16. Now, the residual question before this Tribunal is whether the claimant herein is entitled for reinstatement with back wages. It has been held by Hon'ble Apex Court in number of cases that if the termination of workman is illegal, rule of reinstatement with back wages would follow. However, in the recent past, there is a change in this term and now in most of the cases, view has been taken that reinstatement with back wages is not automatic even though the termination of the workman is in contravention of the prescribed proceedings. It would depend upon the facts and circumstances of each case whether reasonable compensation instead of reinstatement is to be paid.

17. While dealing with reinstatement, the court has to keep in mind the nature of the post, duration of the engagement, nature of appointment, availability of the post, delay in raising industrial dispute and whether the appointment was in accordance with rules or not. The workman herein was admittedly holding temporary posts of daily wager. They have worked with the management for around five years. Though it has been averred by the workman in his affidavit as well as statement of claim that he is not gainfully employed with any other management yet this court has to keep in mind that they were not regular employees of the management nor they have vested right to continue in said employment. The ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent

workman are terminated illegally and/or malafide and/or by way of victimization, unfair labour practice etc. However, when it comes to the case of termination of a daily wager worker and where the termination is found illegal because of procedural defect namely in violation of Section 25-F reinstatement with back wages is not to be automatic. Instead the workman would be given monetary compensation which will meet the ends of justice. Reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily wage basis and even after he is reinstated, he has no right to seek regularization. Since in the case on hand, claimant was admitted engaged as casual labour and claimant being able-bodied person cannot be said to be sitting idle at home. It is legitimate to presume that he was doing something to make both ends meet.

18. No doubt, earlier a view was articulated by the Hon'ble Apex Court in several authorities and legal position was that if termination of a workman is found to be illegal or against the principles of natural justice, in that eventuality, relief of reinstatement with back was would follow. This view was taken by Hon'ble Apex Court in Deepali Gundu Survase Vs. Kranti Junior Adhyapak Mahavidyalaya (2013 AIR SCW 5330). However, in the recent past, there is change in this trend and now in several cases a view has been taken that relief by way of reinstatement alongwith back wages is not automatic even though the action of the management has been found to be totally illegal or void under the law. Question of grant of back wages as well as reinstatement, in fact, would depend upon a number of factors, e.g. nature of post, mode of recruitment, duration of engagement, delay in raising the industrial dispute, nature of the work being performed by the workman etc. However, there cannot be any straight jacket formula to be applied in a mechanical manner by the courts.

19. At this stage, it is necessary to mention that in Oshiar Prasad Vs. Sudamdih Coal Washery (2015) 4 SCC 71, Hon'ble Apex Court while dealing with almost similar case held that when services of a workman have been terminated long back prior to making of the reference and such workmen were either not in the services of either Contractor or/and the previous employer, in that eventuality, question of their absorption or regularization did not arise nor this issue could have been gone into on its merits for the reason that they were not in service. Question of regularization thus can only be considered when contract of employment subsists. In the case on hand, as is clear from the pleadings as well as evidence on record, services of the claimant herein was terminated on 30.04.2011 and thereafter he is virtually out of employment and from the pleadings it is quite clear that he has been in service of the management for the last more than 9 years prior to their termination. In view of this, it is held that the action of the management of BSNL Ghaziabad in terminating services of Shri Vijendra Singh, claimant herein with effect from 30.04.2011 without complying with provisions of the Act is totally unjustified. Having regard to the length of his service and the latest trend of the Hon'ble Apex Court reflected in the various judgements, I am of the view that an amount of Rs.3 lakh appears to be just and reasonable. It is also made clear that in case compensation of Rs.3 lakh is not paid within a period of one month from the date of publication of the award, the claimants would also be entitled to interest at the rate of 6% per annum upon the said amount from the date of the reference till its payment. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

A. C. DOGRA, Presiding Officer

Dated: February 13, 2018

नई दिल्ली, 21 मई, 2018

का.आ. 852.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, उप महानिदेशक, सैन्य फार्म (एमएफ-1), रक्षा मंत्रालय (सेना), नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, दिल्ली सं. 2 के पंचाट (संदर्भ संख्या 61/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.03.2018 को प्राप्त हुआ था।

[सं. एल-14012/17/2014-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 21st May, 2018

S.O. 852.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 61/2014) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the Deputy Director General, Military Farm (MF-1), Ministry of Defence (Army), New Delhi & other and their workmen, which was received by the Central Government on 06.03.2018.

[No. L-14012/17/2014-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT No.2, ROOM No.512, DWARKA COURT COMPLEX, SECTOR 10, DWARKA, DELHI

ID No. 61/2014

Shri Siya Ram S/o late Shri Jagdeo Chauhan,
Village Lala Mohammadpur,
Post Kankerkhera,
Meerut, Uttar Pradesh …Workman

Versus

(i) The Deputy Director General,
Military Farms (MF-1), QMG's Branch, HQ,
Ministry of Defence (Army), West Block,
3, R.K.Puram, New Delhi

(ii) The Commandant,
Military Farm School & Centre,
Grass Farm Road, Meerut Cnatt.,
Meerut, Uttar Pradesh …Managements

AWARD

In the present case, a reference was received from appropriate Government vide letter No.L-14012/17/2014-IR(DU) dated 05.08.2014 under clause (d) of the sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) from the Central Government for adjudication, terms of which are detailed as under:

'Whether the workman has earned right of absorption having been engaged of a considerable period of time regularly even though on daily wages? And whether the management of Military Farm School and Center, Meerut should give him a permanent regular employee status with immediate effect?

2. Parties were put to notice and claim statement was filed on behalf of the claimant stating that the management is a unit of Ministry of Defence and is an establishment under the control and supervision of Central Government and is engaged in imparting technologies, guidelines and education cum training in respect of dairy farming including production and procurement of cow milk and supply thereof to the troops and other establishments with the help and co-operation of its employees. The claimant was engaged as a gardener, which is a substantive post. The claimant was inducted into the service of Military Farm School and Center, Meerut in 1984 for performing perennial/regular nature of work/integral part of employer's establishment as a casual labour/gardener. The claimant rendered service against a substantive post without interruption and he never gave a chance of complaint to the management. Later on, under provisions and norms of DOP & T Scheme 1993 the claimant has been categorized/awarded temporary status by the management. As per direction contained in letter No.E-2/FS dated 06.11.197, per se he became entitled to get absorption with other benefits on the basis of length of his service. Though his position appears at serial No.2 of the seniority list, the employer failed to absorb him. In 2003, services of the claimant and two other employees were dispensed with. The aggrieved employees approached Administrative Tribunal by filing a joint petition and the same was decided in favour of the applicants. All the three workers were taken in service with continuity in compliance of the judgement passed by the Administrative Tribunal. Thereafter, the management vide order No.OA/2601/2003 dated 17.09.2005 started to take work of conservancy, i.e. cleaning of toilets and sweeping in addition to the duties of gardener. Thereafter, the claimant requested for regularization and in retaliation, the officiating commandant of the management did not allow him to join duties with effect from 02.06.2012 under false and baseless allegations. It was also alleged by the management that the claimant quit on his own. The claimant has also tried to resolve the matter amicably resolve the matter and approached the management on various occasions. Left with no other alternative, the claimant sent a legal notice to the claimant, to which the management refused to re-engage the claimant on account of doubtful integrity. However, the claimant was not afforded any opportunity to defend himself prior to his termination. Finally, it has been prayed that the claimant may be awarded permanent status.

3. Claim was demurred by the management taking various preliminary objections, inter alia of the reference being bad in law, claimant having no locus standing to file the claim, concoction of facts, claim being barred by principle of res-judicata, management not being an industry, there being no cause of action etc. On merits, the management has denied the material averments contained in the statement of claim. There is no permanent post of gardener with the management. The claimant was engaged as an when required to carry out work on seasonal and intermittent nature. The

services of the claimant and two other employees were terminated in accordance with law and retrenchment compensation was paid to him. His retrenchment was challenged before Hon'ble CAT vide OA No.1203/01 and Hon'ble CAT disposed the same vide order dated 04.01.2002 with directions to the respondents to act generously and proceed to offer employment even if on the job basis to the applicant in keeping with the seniority. The claimant failed to diligently perform his duties assigned to him and hence the officiating Commandant asked the claimant to perform his duties efficiently. The claimant instead of improving his conduct, started using un-parliamentary language and opted to quit the job on his own. The management has denied the other material averments contained in the statement of claim.

4. Rejoinder was filed on behalf of the claimants wherein the material averments contained in the written statement denied and the facts contained in the statement of claim was reiterated.

5. Based on the pleadings of the parties, this Tribunal vide order dated 09.12.2015, framed the following issues:

(i) Whether the workman Shri Siya Ram has earned right of absorption having been engaged of a considerable period of time regular even though on daily wages? If so its effects?

(ii) Whether the management of Military Farm School and Center, Meerut should give him a permanent regular employee status with immediate effect? If so, its effects.

6. Thereafter, the case was listed for evidence of the claimant, who filed his affidavit in evidence. However, despite affording several opportunities, claimant did not put in his appearance for his examination. Merely filing of an affidavit by a party is not sufficient and contents of the same are to be purified by an ordeal of cross examination. Since none was there on behalf of the claimant, opportunity could not be accorded to the management to purify facts unfolded by the claimant in his pleadings through an ordeal of cross examination. Absence of the claimant clearly depicts that he is no more interested in progress of the case on merits. In such a situation, this Tribunal is left with no alternative but to pass a 'No dispute/claim' award. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

A. C. DOGRA, Presiding Officer

Dated: January 30, 2018

नई दिल्ली, 21 मई, 2018

का.आ. 853.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, महाप्रबंधक, बीएसएनएल, बालासोर (उड़ीसा) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 24/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.04.2018 को प्राप्त हुआ था।

[सं. एल-40011/08/2015-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 21st May, 2018

S.O. 853.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 24/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the employers in relation to the General Manager, BSNL, Balasore (Orissa) & others and their workmen, which was received by the Central Government on 04.04.2018.

[No. L-40011/08/2015-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

Present: Shri B.C. Rath, Presiding Officer,
C.G.I.T.-cum-Labour Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 24/2015

No. L-40011/08/2015 – IR(DU), dated 01.06.2015

Date of Passing Order – 20th March, 2018

Between:

1. The General Manager,
   Bharat Sanchar Nigam Limited,
   Deptt. of Telecom, Telecom Dist.
   Balasore, Orissa – 756 001.

2. M/s. Orissa Computer &Communication
   Pvt. Ltd., Shed No. D-2/10, Sec-A, Zone-D,
   Industrial Estate, Mancheswar,
   Bhubaneswar (Orissa) 756 010.

3. Shri Bibhudhendra Prasad Das,
   FR-108/1, Sailashree Vihar,
   Bhubaneswar, Orissa – 756 001.

4. Shri Manoj Kumar Patra,
   Plot No. 706/2553, Jail Road, Jharpada,
   Bhubaneswar, Orissa – 756 001. …1st Party-Managements.

(And)

The District Secretary,
BSNL, Casual Karmachari Sangha,
Balasore Telecom, Dist. Branch, Balasore- 756 001 …2nd Party-Union.

Appearances:

None. … For the 1st Party-Managements.

None. … For the 2nd Party-Union.

O R D E R

Parties are found absent on repeated calls. After filing of statements/pleadings and settlement of issues by the parties the case was fixed for evidence of the 2nd party-Union. The record further reveals that despite several adjournments from time to time the 2nd party-Union failed to make its appearance or to take any step to adduce evidence on its behalf to substantiate its case for just and proper adjudication of the case. In the above back-drops and in absence of the 2nd Party-Union there is no alternative than to presume that either the workers of the 2nd Party-Union has lost its interest to pursue the dispute for its judicial adjudication or there exists no further dispute between the parties. In the given situation I am constrained to return the reference to the Ministry for taking necessary action at their end.

Dictated & Corrected by me.

B.C. RATH, Presiding Officer

नई दिल्ली, 21 मई, 2018

का.आ. 854.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदशेक, भौतिकी संस्थान, भुवनेश्वर (उड़ीसा) एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 82/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.04.2018 को प्राप्त हुआ था।

[सं. एल-42011/111/2016-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 21st May, 2018

S.O. 854.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 82/2016) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the employers in relation to the Director, Institute of Physics, Bhubaneswar (Orissa) and their workmen, which was received by the Central Government on 04.04.2018.

[No. L-42011/111/2016-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

Present: Shri B.C. Rath, Presiding Officer,
C.G.I.T.-cum-Labour Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 82/2016
No. L-42011/111/2016 – IR(DU), dated 17.11.2016/30.11.2016
Date of Passing Order – 28th February, 2018

Between: The Director, Institute of Physics,
Government of India,
Gajapati Nagar, Bhubaneswar (Orissa) – 751 013 …1st Party-Management.

(And)

The Vice President,
Contract & Construction Labour Union,
Plot No. 32, Ashok Nagar,
Bhubaneswar (Orissa) – 751 009 …2nd Party-Union.

Appearances:

None … For the 1st Party-Management.

None … For the 2nd Party-Union.

O R D E R

Representative of the Management is present whereas none appears on behalf of the 2nd party-Union on repeated calls. It is seen from the record that the 2nd party-Union is not taking any steps for the last four adjournments after filing of written statement by the Management. It appears that either the 2nd party-Union is not interested to pursue the matter. In the above premises I have no alternative than to return the reference without any answer and as such the reference is returned herewith to the Government of India, Ministry of Labour for necessary action at their end.

Dictated & Corrected by me.

B.C. RATH, Presiding Officer

नई दिल्ली, 21 मई, 2018

का.आ. 855.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मुख्य महाप्रबंधक, बीएसएनएल, नम्पाली स्टेशन रोड (हैदराबाद) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 08/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.04.2018 को प्राप्त हुआ था।

[सं. एल-40011/32/2008-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 21st May, 2018

S.O. 855.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 08/2009) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the Chief General Manager, BSNL, Nampally Station Road (Hyderabad) & other and their workmen, which was received by the Central Government on 24.04.2018.

[No. L-40011/32/2008-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 16th day of March, 2018

INDUSTRIAL DISPUTE No. 8/2009

Between:

The General Secretary,
BSNL Contract Casual Employees &
Labour Union, 1-7-139/44, N.V.B. Smaraka Kondram,
S.R.K. Nagar, Risalagadda, Jamistanpur,
Musheerabad, Hyderabad – 500 020. …Petitioner

AND

1. The Chief General Manager,
Bharat Sanchar Nigam Ltd.,,
Telecom, A.P. Circle, Doorsanchar Bhawan,
Nampally Station Road,
Hyderabad – 500 001.
2. The General Manager,
M/s. Bharat Sanchar Nigam Ltd.,
Southern Telecom Region, 6-1-85/10,
2nd Floor, Sainilayam, Saifabad,
Hyderabad – 500 00 …Respondents

Appearances:

For the Petitioner : M/s. Dr. A. Raghu Kumar & B. Pavan Kumar, Advocates
For the Respondent : Sri R.S. Murthy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-40011/32/ 2008-IR(DU) dated 2.3.2009 referred the following dispute between the management of Central Excise & Customs Department, Hyderabad and their workman under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal. The reference is,

SCHEDULE

"Whether the demand of the BSNL Contract, casual Employees & Labour Union for regularization of services of Shri Jamal Sharief by the management of BSNL is legal and justified? If yes, to what relief the workman is entitled to?"

The reference is numbered in this Tribunal as I.D. No. 8/2009 and notices were issued to the parties concerned.

2. The Petitioner appeared before this Tribunal and filed claim statement. The Respondent management also appeared and filed their counter.

3. When the case stands posted for workman's evidence, the Petitioner workman found absent. This Tribunal adjourned the case for several dates to secure the presence of the Workman. But, inspite of several reminders the Petitioner union failed to attend the case. Therefore, the case of the Petitioner union is dismissed for default. Hence, a 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 16th day of March, 2018.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 21 मई, 2018

का.आ. 856.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, कार्यकारी निदेशक, एनटीपीसी लिमिटेड, अंगुल (उड़ीसा) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 42/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02.04.2018 को प्राप्त हुआ था।

[सं. एल-42012/156/2011-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 21st May, 2018

S.O. 856.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 42/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the employers in relation to the Executive Director, NTPC Ltd., Angul (Orissa) & other and their workmen, which was received by the Central Government on 02.04.2018.

[No. L-42012/156/2011-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

Present: Shri B.C. Rath, Presiding Officer,
C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 42/2012

Date of Passing Award – 5th March, 2018

Between:

1. The Executive Director,
M/s. NTPC Ltd., Talcher,
Super Thermal Power Station,
Po. Deepshikha, Angul.

2. The Proprietor,
M/s. Synergy Project,
Maintenance Contractor,
C/o. M/s. NTPC Ltd., Talcher Super Power
Station, Po. Deepshikha, Angul.

3. United Beveries Engineering Ltd.,
Registered Office, Sayadri Sadan, Tilak Road,
Pune – 411 030. …1st Party-Managements.

(And)

Shri Munshi Prasad & 4 others,
S/o. D.N. Prasad, C/o. Kendrapara Behra,
At./Po. Jagannathpur, Angul. … 2nd Party-Workmen.

Appearances:

Shri Samarendra Mallik, Auth. Representative.	…	For the 1st Party- Management No. 1
None.	...	For the 1st Party- Management No. 2 & 3
Shri Munshi Prasad	…	For himself and other Workmen.

A W A R D

The Central Government in the Ministry of Labour in exercising its authority by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act (in short "The Act") have referred an industrial dispute between the management of M/s. NTPC Ltd., and Munshi Prasad & four others alleged to be the workmen of the above Managements vide its letter No. L-42012/156/2011 – IR(DU), dated 15.03.2012 for its adjudication and the schedule of reference is as follows:-

"Whether the action of the management of Proprietor, Synergy Project, Maintenance contractor working under the control of GM, NTPC/TTPS in not re-engaging Shri Munshi Prasad & 4 others in newly awarded maintenance job is appropriate and justified? 2. Whether the action of the contractor, M/s. U.B. Engineering in not paying terminal benefits at the time of terminating Shri Munshi Prasad & 4 others in the dispute is legal and justified? What relief the workmen are entitled to?"

2. The gist of the claim raised by the disputants workmen as emerges from their statement of claim is that they were working as contract labours under the 1st Party-Management of NTPC/TTPS being hired through different contractors i.e. Management No. 2 the Proprietor, M/s. Synergy Project Maintenance, and the Management No. 3, M/s. United Beveries Engineering Ltd. They were paid wages of Rs. 90/- per day to work as Rigour and wages of Rs. 60/- per day to work as a Helper. They were employed initially for such work for maintenance of the boiling section of the Thermal Plant pursuant to an agreement between the contractor Ramji Company and NTPC/TTPS. They continued in their jobs under different contractors from time to time due to expiry of agreements and execution of fresh agreements between the Management of NTPC/TTPS and other contractors including Management No. 2 and 3. It is their claim that they continued to work for the Management of NTPC though contractors were changed from to time. Their entry to the premises of the management of NTPC/TTPS was on the basis of recommendation of the said Management and as such, gate passes were issued to them by CISF on the recommendation of the management of NTPC/TTPS. Though their engagement was shown hire labourers through different contractors from time to time, they were working with the regular staff of the 1st Party-Management of NTPC/TTPS and discharged same nature of duties as entrusted to the counter-part employee of the 1st Party-Management. Hence, they preferred a writ before the Hon'ble High Court of Orissa claiming minimum wages and in an interim order dated 15.4.2004 the Hon'ble High Court directed continuance of service of the disputant workmen through the new contractor i.e. Universal Construction Company and the 1st Party-Management No. 1 was asked to ensure their engagement by the said contractor. When they were continuing in their jobs as on March, 2005 they were disengaged all of a sudden without any notice or notice pay and retrenchment compensation. When the said matter was raised before the Hon'ble Court by preferring a contempt petition, the writ application was disposed of giving a liberty to the disputant workmen to move the labour machinery. It is their further claim that the above disengagement amounts to retrenchment without compliance of due procedure under the Act and as such they should be reinstated to their jobs with back wages and other service benefits.

3. The Management No. 1 NTPC/TTPS and the Management No. 3 M/s. United Beveries Engineering Ltd. have made their appearance after being noticed and submitted their written statements separately refuting the claim of the disputant workmen. As the Management No. 2, M/s. Synergy failed to contest the claim of the disputant workmen it has been set exparte. It is the stand of the Management No. 3 that the disputants were working for the management of NTPC/TTPS through different contractors and they were also engaged by him to work in the Management No. 1 NTPC/TTPS. The contract between him and the Management No. 1 was expired on 31.8.2003 and there-after the disputants were working through another contractor M/s. Universal Construction Company. As the disputants have not claimed any relief against him, the reference is not maintainable against them. On the other hand, the Management of NTPC has taken a stand that there is no existence of "employer and employee" relationship between the parties as the disputants were labourers engaged through different contractors. They preferred a writ before the Hon'ble High Court of Orissa praying for equal pay for equal work as their work was like the work of regular employees of NTPC. As there was an interim direction of the Hon'ble High Court for continuance of their service, and the present Management is to ensure the same, the disputants were engaged under the subsequent contractor M/s. Universal Construction Company after expiry of the agreement with the contactor Management M/s. United Beveries Engineering Ltd. on 31.8.2003. Since the period of contract of M/s. Universal Construction Company was over and there was no need of its service, the contractor was disengaged. The job entrusted to the contractors from time to time was not continuous and perennial in nature. That the writ preferred under the Hon'ble High Court was disposed of without fixation of any liability on the present Management. In the above back-drops the

engagement of the disputants was dispensed with by their contractor as their engagement was purely temporary and contractual and the same came to an end ipso facto with the completion of the work entrusted to the contractor and expiry of the agreement with the said contractor. The disputant having been hired by the contractor cannot be employee of the present Management. Their job being contractual in nature comes under sub-section (oo) (bb) of Section 2 of the Act. As such, no notice or notice pay and retrenchment compensation is required to be paid in compliance of Section 25-F of the I.D. Act. There being no master and servant relationship between the present Management and the disputants, the reference is not maintainable and the Management of NTPC/TTPS is no way liable for their disengagement.

4. On the aforesaid pleadings of the parties the following issues have been settled for just and proper adjudication of the dispute.

I S S U E S

1. Whether the action of the management of Proprietor, Synergy Project, Maintenance Contractor working under the control of D.G., NTPC/TTPS in not re-engaging Shri Munshi Prasad & 4 others in newly awarded maintenance job is appropriate and justified?

2. Whether the action of the contractor, M/s. U.B. Engineering in not paying terminal benefits at the time of terminating Shri Munshi Prasad & 4 others in the dispute is legal and justified?

3. What relief the workmen are entitled to?

5. The disputant workmen have examined one of them as W.W.-1 and filed copies of the gate passes, copy of the order dated 19.12.2002 passed in W.P.(C) No. 5353 of 2002, copy of the order dated 15.4.2004 passed in Misc. Case No. 273 of 204, copy of the final order dated 29.3.2010 passed in W.P.(C) No. 5353 of 2002, copy of the complaint of the workmen an copy of the conciliation failure report dated 14.12.2011 which are marked as Ext.-1 to Ext.-6 to establish their claim, whereas the Management of NTPC/TTPS has examined its Manager (HR) namely Shri Rakesh Sinku as M.W.-1 to refute the claim of the disputant workmen.

F I N D I N G S

6. All the issues are taken into consideration simultaneously for the sake of convenience.

As it emerges from the pleadings of the parties that there is no serious dispute to the fact that the disputants were labourers engaged by different contractors and they were working in the plant of the Management of NTPC/TTPS being engaged through different contractors from time to time. The above fact is pleaded in their statement of claim as well as in the evidence of W.W.-1. No pleading or evidence has been advanced to claim that relationship of master and servant or employer and employee existed between the management of NTPC/TTPS and the disputants. Similarly, not a single word has been whispered or uttered either in the pleadings or in the evidence of the disputants to establish that they were in direct pay roll of the Management of NTPC or they were working under the direct control and supervision of the said Management. It is emerging from their own admission that they were initially engaged in the year 2001 for the maintenance of the boiling section of the Thermal Plant in consonance to the agreement made between one Ramji and the management of NTPC and the agreement was executed for providing labour. They are stated to have been engaged as contractor's labours from time to time. The above fact is also coming forth from the order dated 19.12.2002 of the Hon'ble High Court arising out of W.P.(C) No. 5353 of 2002. The disputants were allowed to continue to work in the 1st Party-Management of NTPC through new contractor after expiry of the agreement with the contractor under whom they were working in view of direction of the Hon'ble High Court in an interim arrangement in the above writ. The said writ having been disposed of without any favour to the disputant except giving an opportunity to raise a dispute before the labour machinery, the Management of NTPC has no liability to ensure their continuance in any work under any contractor. In the above back-drops no liability can be fixed on the management of NTPC for their disengagement even if it is accepted for argument sake that they were disengaged amounting to retrenchment as defined under the Act. When they are not employed or engaged by the said Management of NTPC, question does not arise on its part to comply the provisions of Section 25-F for such alleged retrenchment of the disputants.

7. Coming to the liabilities of the Management contractors it is emerging from the evidence and pleadings of the parties that the contracts executed between those contractors and the Management of NTPC are already over or expired and that being the position the employment of the disputant appears to be purely

contractual i.e. for a specific period or for specific purpose. In the event of completion of the said project or period, the scope of engagement or employment of the disputant is automatically come to an end and there is no need on the part of the contractor to give any notice or notice pay or retrenchment compensation as the disputants are presumed to be aware that their engagement was conditional to certain event or it was for a specific period. As such, the alleged disengagement cannot be termed as retrenchment in view of the provisions in Section 2(oo)(bb) of the Act. That apart, it cannot be over-sighted that the contractor M/s. United Beveries Engineering Ltd. has advanced a pleading in its written statement that he paid an amount of Rs. 23,500/- to each of the disputant workmen towards their terminal benefits in a conciliation proceeding before the labour machinery and the said pleadings has not been specifically denied by the disputants. Thus, the disputant workmen have also no relief against their immediate employers i.e. contractors/Management No. 2 and 3.

8. For the discussions made above, the disputants workmen are not entitled to any relief prayed for.

9. Reference is answered accordingly.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 21 मई, 2018

का.आ. 857.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मुख्य कार्यकारी अधिकारी, इंडस टॉवर लिमिटेड, पुणे और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (सीजीआईटी/एनजीपी/17/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.04.2018 को प्राप्त हुआ था।

[सं. एल-40011/11/2014-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 21st May, 2018

S.O. 857.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (CGIT/NGP/17/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the employers in relation to the Chief Executive Officer, Indus Tower Ltd., Pune & Others and their workmen, which was received by the Central Government on 11.04.2018.

[No. L-40011/11/2014-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SHRI SHYAM SUNDER GARG, PRESIDING OFFICER,
CGIT-CUM-LABOURT COURT, NAGPUR

Case No.CGIT/NGP/17/2014-15 Date: 02.02.2018.

Party No.1(a) : The Chief Executive Officer,
Indus Towers Ltd., Pantagaon 1,
501 & 504, Magarpatta City,
Pune – 411028.

Party No.1(b) : The Regional Director,
Indus Towers Ltd., Skyline Icon,
3rd Floor, Near Mittal Industrial Estate,
Andheri (East), Mumbai – 400059.

Party No.1(c) : M/s Indus Towers Ltd.,
Bharati Crescent, 1 Nelson Mandela Road,
Vasant Kunj, Phase II,
New Delhi – 110070.

Party No.1(d) : M/s R.K. Associates, Contractor,
NH 5, H-36, CIDCO, Aurangabad (MS),
Aurangabad.

Party No.1(e) : M/s Mahindra & Mahindra Ltd.,
(Mahindra Powerol), Gate No. 02,
Akurli Road, Mumbai, Maharashtra,
Mumbai – 400101.

Versus

Party No.2 : The President,
Maharashtra Telecom Kamgar Sena,
Plot No. 27, GTC, SIDCO,
AURANGABAD.

AWARD

(Dated: 02nd February, 2018)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Indus Towers Ltd. and their union, Maharashtra Telecom Kamgar Sena, for adjudication, as per letter **No.L-40011/11/2014- (IR(DU) dated 11.08.2014,** with the following schedule:-

"Whether the action of the management of M/s Indus Towers Ltd., New Delhi, Regional Director, Indus Towers Limited, Andheri (East), Mumbai & Chief Executive Officer, Indus Towers Ltd., Pantagon Pune through its contractor M/s R.K. Associates, Aurangabad in removing the services of 15 contract workers namely (1) Sh. Jaywant Wadhve (2) Sh. Govind Deshmukh (3) Sh. Jitendra Ingle (4) Sh. Nandu Wankhede (5) Sh. Gopal Wankhede (6) Sh. Sunil Jadhav (7) Sh. Amol Dhodge (8) Sh. Satish Nandankar (9) Sh. Panduran Sarnaik (10) Sh. Akash Deshmukh (11) Sh. Ankush Sonwar (12) Sh. Ramesh Yadavrao Kamble (13) Sh. Keshav Bapurao Dahake (14) Sh. Gopal Suryawanshi (15) Sh. Balaji Manik Godalwar and not reinstating these 15 contract workers by new Vendor M/s Mahindra & Mahindra Ltd. (Mahindra Powerol) and not utilizing he services of all contract workers for 8 hours (legally permissible working hours) is legal, proper and justified and if not, to what relief to these contract workers (inclusive of 15 terminated contract workers) are entitled to and from which date and what other directions are necessary n the matter ?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement, by registered post with acknowledge due.

On 27.01.2015, management was present through their advocates and filed vakalatnama.

In spite of sufficient service of notices on the petitioner, none appeared on behalf of the petitioner. No statement of claim has also been filed on today i.e. on 18.01.2018 even after notice was served for the date of 12.12.2017. Today, advocate for the management was present and mentioned that he had already filed a pursis for closure of the reference.

It is well settled that whenever a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and it is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the party fails to appear or file written statement or produce evidence, the dispute referred by the Government cannot be answered in favour of the said party and the party would not be entitled to any relief.

Judging the present case with the touch stone of the settled principles as mentioned above, it is found that the petitioner has neither appeared nor filed any statement of claim and as such, he is not entitled to any relief. Hence, it is ordered:-

ORDER

The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

SHYAM SUNDER GARG, Presiding Officer

नई दिल्ली, 21 मई, 2018

का.आ. 858.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, आयुक्त, दिल्ली नगर निगम एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, दिल्ली सं. 1 के पंचाट (संदर्भ संख्या 12/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.04.2018 को प्राप्त हुआ था।

[सं. एल-42025/03/2018-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 21st May, 2018

S.O. 858.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID No. 12/2013) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the Commissioner, Municipal Corporation of Delhi and their Workmen, which was received by the Central Government on 25.04.2018.

[No. L-42025/03/2018-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT No. 1, ROOM No. 511, DWARKA COURT COMPLEX, SECTOR 10, DWARKA, DELHI

ID No. 12/2013

Shri Darshan Singh S/o Shri Maha Singh,
R/o 247, Balmiki wali Gali,
Village Singhu, Delhi …Workman

Versus

The Commissioner,
Municipal Corporation of Delhi,
Civic Centre,
Minto Road, Ajmeri Gate,
New Delhi …Management

AWARD

This claim has been directly filed by the claimant, ShriDarshan Singh, under Section 2-A of the Industrial Disputes Act, 1947 (in short the Act) with the averments that he was working with the management as safai karamchari since 2005. He was lastly posted at Circular No.90/75, Kishan Ganj, Delhi Zone, Sadar Paharganj, New Delhi and his last drawn salary was Rs.3400.00 per month.

2. It is the case of the claimant that he was appointed on compassionate grounds as his mother, who was working with the management as safai karamchari, died while in service. Claimant went to Gomukh for *kavad* on 10.07.2008 and he did not return home. Thereafter, the wife of the claimant tried her level best to trace/search for the claimant, but she could not succeed.

3. In the first week of May 2011, the claimant returned home and he was under depression. Later on, he was medically treated by a doctor and was found to be suffering from Anxiety Neurosis. Immediately on recovery, the claimant submitted an application to the management for reinstatement but the management neither replied nor reinstated him. The management has terminated service of the claimant on 05.01.2012 without giving any chance to the claimant without show cause notice etc. As such, his termination has been alleged to be illegal under the law. Claimant sent a demand notice on 06.02.2012 by registered post but no reply was given. Thereafter, the claimant approached the Conciliation Officer but the management failed to appear in the conciliation proceedings as a result of which conciliation proceedings ended into failure. Thereafter, the claimant has filed this claim petition for reinstatement with full back wages.

4. Claim was resisted by the management, who has field reply taking preliminary objections, inter alia of non service of demand notice and as such claim is liable to be rejected. It is further alleged that the claimant was engaged on daily basis on compassionate grounds and his engagement was for a limited period as per requirement of work. Claimant has himself abandoned his service on 08.07.2008, as such he was disengaged vide office order No.1384/SS/DEMS/SPZ/2011-12 dated 05.01.2012 and the order was duly communicated to the claimant.

5. On merits, it is alleged by the management that the appointment of the claimant was purely on daily wage basis as safai karamchari on compassionate grounds. It is denied that the claimant was engaged on monthly basis. It has further been alleged that the claimant was absent from 01.07.2008 without any intimation to the management. Averments regarding his illness has been denied by the management. Finally, a prayer has been made for dismissal of the claim petition.

6. Against this factual background, my learned predecessor, vide order dated 22.04.2013, framed the following issues:

(i) Whether the claimant worked continuously with the management for a period of more than 240 days in preceding 12 months from the date of termination of his service?

(ii) Whether action of the management in terminating services of the claimant amounts to retrenchment within the meaning of section 2 (oo) of the Industrial Disputes Act, 1947?

(iii) Whether the claimant is entitled for relief of reinstatement?

7. Claimant, in order to prove his case against the management, examined himself as WW1 and tendered in evidence his affidavit Ex.WW1/A and also relied on documents Ex.WW1/1 to Ex.WW1/9. Management, in order to rebut the case of the claimant, examined ShriKaptan Singh, Sanitation Superintendent as MW1, whose affidavit is Ex.MW1/A. He also relied on documents Ex.MW1/1 and Ex.WW/M1.

8. I have heard Shri Abhinav Kumar, A/R for the claimant and Shri Nitin Soam, A/R for the management.

Findings on Issue No. (i), (ii) and (iii)

9. All these issues are being taken up together for the purpose of discussion as they are inter-related and can be conveniently disposed of. It is clear from perusal of pleadings as well as evidence on record that the claimant has come with the specific plea that he was initially engaged as daily wager safai karamchari on compassionate grounds by the management and the management has terminated his service in violation of provisions of the Act. No notice was served upon the claimant before ordering his termination nor any enquiry was conducted. It is further clear from the pleadings as well evidence on record that factum of engagement of the claimant as safaikaramchari has not been denied even by the management in its reply. Even Shri Kaptan Singh MW1, in his statement has admitted in his cross examination that the claimant was engaged as daily wager safai karamcharion compassionate grounds. During the course of his cross examination, Shri Kaptan Singh was directed to file policy relating to regularization of compassionate appointees. He has filed the same. His cross examination further shows that the claimant worked regularly with the management from April 2005 to 2008. He has admitted that Ex.WW1/3 was issued by the management. Ex.MW1/1 also shows that the claimant was engaged as daily wager as is clear from his attendance record.

10. Claimant, Shri Darshan Singh, while appearing as WW1 has supported the averments made in the claim petition. He has admitted that in the year 2008, he had gone to Gomukh to fetch *kavad* and he had informed Shri Ramesh, Assistant Sanitary Inspector regarding this. There is nothing on record to show that the claimant has filed application so as to visit Haridwar. Since he returned only in 2011 after about 3 years, as such management had terminated his service.

11. No doubt, under the law, if a workman remains unauthorizedlyabsent or has abandoned job, in that eventuality, management is required to issue show cause notice or hold enquiry, which has not been done in the present case. Since management has admitted that the claimant was engaged as daily wager, as such, relationship of employer and employee between the parties stands admitted. Initial onus is always upon the workman to prove his status as a workman. However, when factum of engagement of a workman has been duly admitted by the management, in that background, since the management has not issued any show cause notice in terms of provisions of 25-F of the Act, as such action of the management on the very face of it is unjust, illegal and against provisions of the Act.

12. Section 25 F lays down the conditions precedent to the retrenchment of the workman and require the employer to give one month notice to the workman in writing or one month wages in lieu of such notice as well as retrenchment of compensation to such workman. This provision is mandatory and violation of the same would render action against the management under the law. The Hon'ble Apex court in *Bhuvnesh Kumar Dwivedi vs. M/s HindalcoIndusties Ltd.*(2014 LAB.I.C. 2643 Supreme Court) interpreted the provisions of Section 25 F of the Act and observed as under:

> "13. ….. no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until the conditions enumerated in Clauses (a) and (b) of Section 25 F of the Act are satisfied. In terms of Clause (a), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment or pay him wages in lieu of the notice. Clause (b) casts a duty upon the employer to pay to the workman at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service of any part thereof in excess of six months. This Court has repeatedly held that Section 25F(a) and (b) of the Act is mandatory and non-compliance thereof renders the retrenchment of an employee nullity."

13. It is thus clear from the ratio of the above authorities that compliance of provisions of Section 25 F is mandatory under the law and violation of the same would render action against the management to be illegal or void under the law.

14. The claimant has, in his affidavit, clearly stated that he was not gainfully employed after his termination nor there is any evidence on record to show that claimant was doing any kind of job after his termination. Under such

circumstances, it is reasonable to presume that claimant was out of job after his termination. The Hon'ble Apex Court in case **"Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya"** has held as under :

The propositions which can be culled out from the aforementioned judgments are:

i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

ii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statementbefore the adjudicating authority or the Court of first instance that he/she was not gainfully employed orwas employed on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the employee/workman wads gainfully employed and was getting wages equal to the wages he/she wads drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

15. The Hon'ble Apex Court also held that different expressions are used for describing the consequence of termination of a workman's service/employment/ engagement by way of retrenchment without complying with the mandate of Section 25-F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometime as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25-F (a) and (b) has the effect of rendering the action of the employer and nullity and the employee is entitled to continue in employment as if his service was not terminated. (*Anoop Sharma Vs. Executive Engineer, Public Health Division No.1 Panipat* (2010) 5 SCC 497).

16. In view of this it is held that the workman has continuously worked for a period of 240 days in a calendar year preceding his termination and as such, action of the management in terminating service of the claimant on the fact of it is illegal ad it does not amount to retrenchment within the meaning of section 2(oo) of the Act. In the present case, there was no specific contract or engagement of workmen for a specific period or against a specific project. As such, so-called termination of the claimant without issuance of show cause notice or enquiry cannot legally sustain.

17. Now, the only residual question which survives for consideration is whether the claimant is entitled to reinstatement in service. It is apposite to mention here that earlier Hon'ble Apex Court has articulated a view which is reflected in several judgments that if termination of a workman is found to be illegal, the relief of reinstatement with back wages would follow. However, in recent past, there is change in this trend and now in several cases a view has been taken that relief by way of reinstatement with full back wages is not automatic.

18. Though it has been averred by the workman in his affidavit as well as statement of claim that he is not gainfully employed with any other management yet this court has to keep in mind that he was not a regular employee of the management nor he has vested right to continue in said employment. The ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or malafide and/or by way of victimization, unfair labour practice etc. However, when it comes to the case of termination of a daily wager worker and where the termination is found illegal because of procedural defect namely in violation of Section 25-F reinstatement with back wages is not to be automatic. Instead the workman would be given monetary compensation which will meet the ends of justice. Reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily wage basis and even after he is reinstated, he has no right to seek regularization.

19. While dealing with reinstatement, the court has to take in mind the nature of the post, duration of the engagement, nature of appointment, availability of the post, delay in raising industrial dispute and whether the appointment was in accordance with rules or not.

20. In the present case, claimant was admittedly a daily wager and even if he is ordered to be reinstated, management can still do away with his service by issuing due notice. Moreover, having regard to the latest trend being followed by the Hon'ble Apex Court and the fact that he was not holding a regular job, there is no question of his reinstatement with back wages. However, having regard to the fact that no show cause notice or retrenchment compensation was paid to the claimant in terms of provisions of Section 25-F of the act, an amount of Rs.1 lakh is

awarded to the claimant as retrenchment compensation. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : April 5, 2018

A. C. DOGRA, Presiding Officer

नई दिल्ली, 21 मई, 2018

का.आ. 859.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, आयुक्त, उत्तर दिल्ली नगर निगम एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, दिल्ली सं. 1 के पंचाट (संदर्भ संख्या 256/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.04.2018 को प्राप्त हुआ था।

[सं. एल-42011/147/2015-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 21st May, 2018

S.O. 859.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID No. 256/2015) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the Commissioner, North Delhi Municipal Corporation and their Workmen, which was received by the Central Government on 25.04.2018.

[No. L-42011/147/2015-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT No. 1, ROOM No.511, DWARKA COURT COMPLEX, SECTOR 10, DWARKA, DELHI

ID No. 256/2015

The General Secretary,
MCD General Mazdoor Union,
Room No.95, Barrack No.1/10,
Jam Nagar House, Shah Jahan Road,
New Delhi – 110 011 …Workman

Versus

The Commissioner,
North Delhi Municipal Corporation,
4th Floor, Civic Centre, Minto Road,
New Delhi – 110 002 …Management

AWARD

This award shall dispose of a reference received from Ministry of Labour and Employment vide Order No. L-42011/147/2015-IR(DU) dated 03.12.2015 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) for adjudication of an industrial dispute, terms of which are as under:

> 'Whether S/Shri Chuni Lal S/o late Nathu Singh is entitled to be promoted as Garden Chaudhary under promotional quota as their juniors are promoted in the said category with effect from 04..03.2014? If so, what directions are necessary in this respect?' Whether the action of the management of North Delhi Municipal Corporation in not granting the pay scale of Rs.3050-4590 revised from time to time with all consequential benefits to Shri Chunni Lal with effect from 02.02.1999 is fair and justified? If not, what relief the workmen entitled to?'

2. Claim statement was filed by the claimant herein averring that Shri Satish Kumar was regularized on the post of mali on 01.04.1989 and has been working as acting Chaudhary with effect from 02.02.1999 under Karol Bagh Zone of Horticulture and his services were transferred to Civil Lines Zone, Horticulture in July 2009 whre he worked upto October 2013 and was transferred back to Karol Bagh Zone in November 2013. The claimant has not been allowed to participate in the promotion to the post of Garden Chaudhary on the grounds that the claimant is not 10th pass with Agriculture as one of the subjects. As per un-notified recruitment rules, claimant is entitled to promotional post of Chaudhary and no minimum qualification is prescribed. Some acting chaudharies similarly situated were allowed grant

of pay of Chaudhary from the date when they were performing their duty as Garden Chaudhary as per the direction of Hon'ble Tribunal in TA No.1317/2009 in the matter of Sultan Singh Vs. MCD and further direction of Hon'ble High Court of Delhi titled Sultan Singh & others in WP(C) No.7947/2010 and dismissed as withdrawn by Hon'ble Supreme Court of Special Leave to Appeal (C) No.20069/2011 on 09.04.2012. In another writ petition No.5453/2012 titled Sultan Singh Vs MCD Division Bench of Hon'ble High Court directed the management to comply with the writ petition. Management vide order 04.06.2013 directed for payment of duties of higher post (Garden Chaudhary). The claimant was not allowed to participate in the promotion process due to wrong interpretation of the unnotified recruitment rules, that the claimants are not 10th pass with Agriculture. Juniors to the claimant were promoted to the post of Garden Chaudhary with effect from 04.03.2014. Hence the management has not only violated the un-notified recruitment rules but also violated Article 14 & 16 of the Constitution of India. Hence the management has indulged in unfair labour practice and non-grant of promotion to the claimant is totally illegal, unfair, unjust and discriminatory. Even Hon'ble High Court in a bunch of writ petitions No.7669/2002 has held on 26.02.2004 that 50% promotional posts in which the educational qualification are not required. Juniors to the claimants were promoted as Chaudhary with effect from 04.03.2014 under promotion quota. Finally, it has been prayed that the claimant may be granted promotion as Garden Chaudhary with effect from 04.03.2014 and also award pay scale of Rs.3050-4590 with effect from 02.02.1999.

3. Claim was demurred by the management taking various preliminary objections, inter alia Management has demurred claim of the claimants by taking preliminary objections, inter alia, present dispute not being an industrial dispute as there is no espousal & no demand notice has been served upon the management, claim being misconceived, claim being stale etc. On merits, management has admitted the factum of regularization of the claimant as mali on 01.04.1989. As per the existing rules for the post of Garden Chaudhary, malis having eight years of regular service in the grade and possessing qualification of 10th pass with Agriculture are eligible for promotion to the next post. There is prescribed procedure for promotion to the post of Garden Chaudhary and there must be sanctioned/vacant post of Garden Chaudhary to which the workman can lay claim when he has passed trade test conducted by the department. The management has denied the remaining material facts contained in the statement of claim.

4. It is pertinent to mention here that the claimant expired on 02.05.2016 and he is survived by his widow Ms.Savitri, two sons S/Shri Sunil & Sandeep and a daughter Ms.Madhubala who is married and it was stated by Shri Sunil that he has no objection in case benefits which has accrued on account of death of his father late Shri Chunni Lal is made to his mother, Ms.Savitri. Hence, the legal heirs of the claimant examined Ms.Savitri as WW1 and Shri B.K. Prasad as WW2 and tendered in evidence their affidavit Ex.WW1/A& Ex.WW2/A and also tendered in evidence documents Ex.WW1/1 and Ex.WW2/1 to Ex.WW2/3 respectively. Management, in order to rebut the case of the claimant, examined Shri Keshav lal, Assistant Director as MW1, whose affidavit is Ex.MW1/A and he also relied on documents Ex.MW1/1 and Ex.MW1/2.

5. I have heard Shri B.K. Prasad, A/R for the claimant and Shri Madan Sagar, A/R for the management.

6. Admittedly, in the present case, reference has been made under Section 10 sub Section (2A) of the Act for adjudication. It is now well settled position in law that when a reference has been made for adjudication to the Tribunal or Labour Court, as the case may be, it is paramount duty of the court to decide the same on merits, irrespective of the pleas taken by the management. The dispute in the case in hand cannot be said to be stale for the simple reason that there is no previous adjudication of the matter between the parties from a competent court nor that there is inordinate delay in approaching this Tribunal by the claimants.

7. It is clear from the preliminary objections taken in the written statement by the management that the management has raised objection that no demand notice has been served upon the management nor the MCD General Mazdoor Union has any locus standi to raise the present dispute as the union is not a recognized union of the management. To my mind, there is no requirement of law that a dispute can be raised only by a recognized union. In this regard, it is appropriate to refer to the judgement of the Hon'ble Apex Court in the case of State of Bihar Vs. Kripa Shankar Jaiswal (AIR 1961 (2) SC Report 1) wherein also objection was taken on behalf of the management that the union was not a registered under the Trade Union Act on the date of the settlement and said plea was rejected by observing as under:

> 'Held, that for a dispute to constitute an industrial dispute it is not a requisite condition that it should be sponsored by a recognized union or that all the workmen of an industrial establishment should be parties to it. A settlement arrived at in course of conciliation proceedings falls within Section 18(3)(a) and (d) of the Industrial Disputes Act and as such binds all the workmen though an unregistered union or only some of workmen may have raised the dispute. The absence of notice under Section 11(2) by the Conciliation Officer does not affect the jurisdiction of the conciliation officer and its only purpose is to apprise the establishment that the person who is coming is the conciliation officer and not a stranger. Any contravention of Section 12(6) in not submitting the report within 14 days may be a breach of duty on the part of the conciliation officer ; it does not affect the legality of the proceedings which terminated as provided in Section 20(2) of the Act.

8. There is also ample evidence on record that the workman herein was performing duty as officiating Chaudhary. It is clear from perusal of office order dated 27.11.2008 Ex.WW1/1 that that name of the claimant finds mention in the list at No.1 of serial No.(B) where copy of the office order is endorsed to all the Chaudharies. It is specifically alleged in the affidavit of Ms.Savitri that her husband was doing work of acting Chaudhary with effect from 02.02.1999. There are also averments in the claim statement that one Shri Jai Chand has also been granted pay scale of Chaudhary by the management of MCD and Sultan Singh and others vs. MCD, who were doing work of acting Chaudhary , vide judgement of the Hon'ble High Court, i.e. in the case of MCD vs. Sultan Singh & others and necessary orders for implementation of the said judgement were issued by MCD.

9. Equally merit-less is the plea taken by the management that the present dispute is not sponsored or espoused by substantial number of workmen. It is fairly settled position in law that even non-espousal of a case by the union would not deprive the workman of the relief to which the workman is otherwise entitled under the law. Such view appears to have been taken in the case of Nazrul Hassan Siddiqui vs. Presiding Officer, Industrial cum Labour CourtBombay (1997) Lab.I.C. 1807. In the above cited case also contention was raised by the management that the dispute dies not fall within the definition of 'industrial dispute' and the same has not been referred or supported by substantial section of workmen. High Court rejected the plea of the management by placing reliance upon the decision of the Hon'ble Supreme Court in the case of Associated Cement Companies Ltd. (AIR 1960 SC 777), which it was observed as under:

> 'We have already noticed that an industrial dispute can be raised by a group of workmen or by a union even though neither of them represent the majority of the workmen concerned; in other words, the majority rule on which the appellant's construction of Section 19(6) is based is inapplicable in the matter of the reference under Section 10 of the Act. Even a minority group of workmen can make a demand and thereby raise an industrial dispute which in a proper case would be referred or adjudication under Section 20.'

10. In view of the ratio of the judgement discussed above, it is clear that espousal of a dispute by majority members of the union is not sine qua non for adjudication of such dispute in terms of Section 10 of the Act.

11. It was strongly contended on behalf of the claimant that juniors to the claimant were allowed to participate in the promotional quota on regular basis but he was denied on the grounds that he was not possessing the requisite qualification of 10th Agriculture.

12. The main attack of the management is that the claimant herein was not having requisite qualification, as such, there is no question of grant of pay scale of Garden Chaudhary to Shri Shri Chunni Lal from 02.02.1999 . There is no merit in the stand taken by the management in its reply, that the claimant herein is not entitled for promotion to the post of Chaudhary inasmuch as he does not possess the requisite qualification. To my mind, this plea is devoid of any merit inasmuch as similarly situated other workers who were performing duties of Chaudhary, i.e. acting Chaudhary have been granted pay scale of Garden Chaudhary after judgement dated 27.07.2011 rendered by the Hon'ble High Court in the case of MCD vs. Sultan Singh as well as MCD vs. Mahipal(WP 5550 of 2010). Operating portion of the judgement in Sultan Singh (supra) of the Hon'ble Division Bench is as under:

> "28. Considering the entire facts and circumstances it is apparent that the claim of the respondents have always been that they should be paid the difference in pay of Mali/Chowkidar and the Garden Chaudhary as they were made to work on the post of Garden Chaudhary whereas the petitioner had first denied that they worked as Garden Chaudharies, then took the plea that the Assistant Director (Horticulture) was not competent to ask the respondents to work as Garden Chaudharies and that the respondents cannot be appointed to the post of Garden Chaudharies in accordance with the recruitment rules. There is no doubt that respondents are not claiming appointment to the post of Garden Chaudharies on account of having worked on ad-hoc basis on the post of Garden Chaudhary contrary to rules or that some of them not having the requisite qualifications are entitled for relaxation.
>
> 29. In the entirety of facts and circumstances therefore, the learned counsel for the petitioner has failed to make out any such grounds which will impel this Court to exercise its jurisdiction under Article 226 of the Constitution to set aside the orders of the Tribunal dated 29th January, 2010 and 7th October, 2010 as no illegality or un- sustainability or perversity in the orders of the Tribunal has been made out.
>
> 30. The writ petition is, therefore, dismissed. Parties are left to bear their own cost."

13. It is further clear that SLP was also filed by MCD before the Hon'ble Apex Court vide IA No.2 WP for special leave S20069/2011 MCD vs. Sultan Singh and others which was also dismissed as withdrawn vide order dated 09.04.2012. It is further clear that the Hon'ble High Court in Sultan Singh case strongly deprecated the stand taken by the management that the workmen were not possessing requisite qualification or have not qualified the test etc. It was clarified that since the workmen were discharging duties to the post of Garden Chaudhary, a such, workmen were entitled for the salary of Garden Chaudhary and competent authority need not look into anything else except the fact that the

workman had worked as Garden Chaudhary. Therefore, stand taken by the management that the claimant herein does not possess requisite qualification is without any merit and has no relevance so far as question of grant of promotion to the post of Garden Chaudhary is concerned.

14. It is not out of place to mention here that even if the claimant herein was not a party in Sultan Singh case referred above, judgement of the Hon'ble High Court is binding on the management and management is required to implement the same in letter and spirit and the same is judgement in rem, and all similarly situated workmen are required to be accorded the benefit of the said judgement of the Hon'ble High Court, which have become final. There is no question of even plea of delay and laches when management had not led any evidence to prove the same. The Hon'ble High Court has decided an abstract proposition of law, i.e. a mali who is performing duty as officiating/acting Chaudhary is entitled to the salary/wages of Chaudhary. Law is fairly settled that if a person is working on a higher post, on adhoc or temporary basis, even such workman is entitled to salary/wages of higher post, unless rules or regulations specifically provides otherwise. I find support to this view from Secretary vs. Lieutenant Governor Port Blair (1998 Lab.I.C. 598), yet in another case, Hon'ble Apex Court while dealing with a similar situation regarding of grant of similar benefits to an employee who was not a party to the writ petition or lis in the case of State of Uttar Pradesh vs. Arvind Kumar Srivastava (2015) 1 SCC 347 observed as under:

> "The moot question which requires determination is as to whether in the given case, approach of the Tribunal and the High Court was correct in extending the benefit of earlier judgment of the Tribunal, which had attained finality as it was affirmed till the Supreme Court. The legal principles that can be culled from the judgments, cited both by the appellants as well as the respondents, can be summed up as under:
>
> (1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.
>
> (2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.
>
> (3) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularization and the like (see K.C. Sharma & Ors. v. Union of India (supra). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence."

15. As a sequel to my above discussion, it is held that Shri Chunni Lal, the claimant herein, is entitled to the pay scale of Garden Chaudhary with effect from 02.02.1999and as a corollary, management is liable pay the difference of wages of mali vis-a-vis Garden Chaudhary from the date when the workman herein was performing duties and functions of Garden Chaudhary till 02.05.2016, i.e. the date of his death. Further the claimantis also entitled to be promoted to the post of Garden Chaudhary from 04.03.2014, i.e the date when his juniors were promoted as regular Garden Chaudhary. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : March 16, 2018

A. C. DOGRA, Presiding Officer

नई दिल्ली, 24 मई, 2018

का.आ. 860.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, भारतीय स्टेट बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 1, चंडीगढ़ के पंचाट (संदर्भ संख्या 30/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.05.2018 को प्राप्त हुआ था।

[सं. एल-12012/42/2009-आईआर (बी-I)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 24th May, 2018

S.O. 860.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID No. 30/2010) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Chandigarh as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their Workmen, received by the Central Government on 24.05.2018.

[No. L-12012/42/2009-IR (B-I)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH

Case No. ID No. 30 of 2010

Smt. Santosh, C/o Sh. S.S. Meelu,
Labour Laws Adviser,
H. No. 364, Sector 32-A, Chandigarh. …Workman

Versus

1. The Chief General Manager, State Bank of India, Local Head Office, Sector-17, Chandigarh.
2. The Branch Manager, State Bank of India, Air Force Station, High Grounds, Chandigarh. …Management

Order Dated : 25.04.2018

A reference was received from the Government of India vide Order Dated 01.02.2011 under Section 10 sub-Section 2(A) and sub-section 1, clause (d) of the Industrial Disputes Act, 1947(in short the Act) for adjudication of an industrial dispute terms of which are as under:-

"Whether the action of the management of State Bank of India, Chandigarh in terminating the services of Smt. Santoshw.e.f. March, 2006 without following the provisions of Section 25-F of the Industrial Disputes Act, 1947, is legal and justified? To what relief the workman is entitled?"

It is clear from the statement of claim that workman was appointed as part time Sweeper on 01.05.1988. She was not issued any letter of appointment and she was a part time Sweeper. She was working from 9.00 am to 4.00 p.m. Later on, since March 2006, she was given the wages, fixed for full time Sweeper till her illegal termination on 21.12.2006. At the time of her termination she was getting wages of Rs.1,500/- .

It is a case of the workman that at the time of her illegal termination on 21.12.2006, she has completed 240 days in the preceding year. The management has not followed the mandatory provisions of the ID Act as no notice pay/retrenchment compensation was given to the workman before her termination as per Section 25-F of the Act.

It is further alleged that no charge-sheet was issued to the workman before ordering her wrong termination and unemployment since 21.12.2006. A prayer is made for reinstatement with full back wages.

The claim was contested by the management by filing written statement. Management has taken preliminary objection that reference is not maintainable as the workman was not employed by the management on temporary/ad hoc basis. No letter of appointment was issued to the workman and she does not fall under the definition of the workman. Moreover, she has not completed 240 days in any calendar year before her termination. On merits, the management have denied most of the averments. It has been denied that she was appointed as part time Sweeper. No letter of appointment was issued to her.

No issues were framed in the present case by my learned predecessor as such the Tribunal is required to answer the above reference only. The workman in respect of her case examined herself as WW1 and she also relied upon document W2 to W10.

The management has examined Sh. Pawan Kumar Jaswal, Branch Manager and his affidavit is exhibited as MW1.

I have heard Sh. S.S. Meelu AR for the workman and Sh. S.K. Gupta AR of the management and perused the file.

It is clear from the pleadings of the parties that workman has come with the specific plea that she was engaged on 1st May, 1988 by the management and no letter of appointment was issued to her. As per the pleadings, her services were terminated on 21.12.2006. there is enough documentary evidence on record to show that the workman was in the employment of the management from 1988 till December 2006. A perusal of affidavit Exb.W2 shows that applicant has written to the Branch Manager that she has worked from 01.12.2002 to 31.12.2002 in the premises of the bank and she was doing the work of cleaning. There is also mention of Rs.600/- which she has received as salary. Exb.W3 is a debit slip which shows that Rs.600/- were paid to Smt. Santosh(workman) by the bank-authority. The document Exb.W4 shows that Branch Manager of the management has written to Security Officer regarding the issuance of Gate Pass to the workman. Exb.W5 is the copy of Identity Card of the workman.

During the course of arguments, learned AR for the workman urged that during the course of duty, she suffered an electric shock and copy of the medical certificate is exhibited as W6 wherein there is a mention of having received electric shock while working in the Branch.

Smt. Santosh has also written a letter Exb.W8 to the AGM of the State Bank of India that she is now working as full time worker and her services be accordingly regularised. There is also a letter Exb.W9 which shows that request of the application for regularisation was forwarded to the Higher-Authority. The workman has also filed a Writ Petition in the Hon'ble High Court which was decided on July 25, 2008. The Hon'ble High Court has observed that writ petition involves disputed question of facts which cannot be examined by the writ Court and the workman is at liberty to seek a remedy before the appropriate forum. The workman has also filed her salary slip which shows that in the year 2000, she was being paid salary by the Bank.

It is also appropriate to refer to the statement of MW1 Sh. Pawan Kumar Jaswal, Branch Manager. This witness did not produce ledger and cash book as well as attendance record of the workman. He has only brought petty charges register from 1986 to 2010. He has further stated that workman was doing job as required by the Manager of the Bank. Some times she was doing cleaning work also in the bank premises. He has made reference to the various voucher whereby payments has been made to the workman by the management. He has also admitted that payment was being made to the workman on monthly basis. This witness could not reply as to how the payments of wages were being made to the workman in the absence of attendance register. He had made a vital admission in the last line of his cross-examination that workman worked from the year 1998-2006 in the Bank. He further admitted that premises were being sweeped and cleaned every working day by the workman.

It is thus clear from the both oral as well as documentary evidence on record that workman was working continuously with the bank. The bank has also not produced the record pertaining to the engagement of the workman i.e. attendance register and other documents as mentioned in the application which was ordered by the Tribunal vide order dated 26.02.2014.

There is no dispute with the proposition of law that initial onus is always upon the workman to prove the relationship of employer and employee. However, situation would be different when management is not producing the record which is in its possession such as attendance register, wages register etc. to show the factum of the engagement of the workman by the management. In the case on hand, since MW1 Sh. Pawan Kumar Jaswal, Branch Manager has admitted the factum of engagement of the workman during the relevant period and documentary evidence as discussed above also clearly indicates that workman was in the employment of the management prior to her termination.

Admittedly in the case on hand, no notice as required under Section 25-F of the Act was issued to the workman before her termination nor she was paid one month salary in lieu of such notice. The contention of the management is that she has not worked in 240 days in any calendar year is totally merit less in the wake of both oral as well as documentary evidence on record which shows that workman was in continuous employment of management since the time of her engagement till her termination in the year 2010. There is a long live of the decisions of the Hon'ble apex Court as well as of High Courts that the provisions of Section 25-F of the Act are mandatory in nature and violation of the same would render the order of retrenchment to be void ab initio or non-est in the eye of law. The net result of the discussion is that action of the management in terminating the services of the workman is totally arbitrary and illegal as no notice of one month was given to the workman nor one month salary was given to the workman.

Now the residual question before the Tribunal is whether the workman is entitled for reinstatement with back wages or not?

It is clear from the evidence on record that workman in the present case was worked regularly and continuously during the period 1988 till her termination in the year 2006. There is no positive evidence filed by the management that there was any break ion service of the workman. The Court has given opportunities to the management to bring attendance record etc. But the management has not brought the same and simply stated that no such record is maintained. It is not understandable as to how the payment of wages should be made without maintaining the attendance register of a workman. Be that as it may, the evidence of continuity in service is overwhelming and now the only question is whether the workman is entitled for reinstatement of her service with back wages. Concededly, there is gross violation of the

provisions of Section 25-F of the Act and it is clear from the record that sweeping and cleaning work is done daily in the premises of the Bank. The management has followed the principle of higher and fire by drawing all the norms to the winds. There is also no evidence on record to show that after her termination on 21.12.2006, the workman was gainfully employed. The workman has clearly stated in her affidavit that she is out of employment and during the course of arguments, the workman was present and narrated a tale of her suffering after her termination.

The Hon'ble High Apex Court in number of cases has dealt with a situation whether termination has been held to be illegal and in violation of the provisions of Section 25-F of the Act. In this regard, specific reference can be made to the case of HariNandan Prasad &Anothers Vs. Food Corporation of India and another(2014)7 SCC 190. It is clear from the ratio of the judgment that the number of factors are to be considered by the Court i.e. nature of Post, duration of engagement, delay in raising the industrial dispute etc. are the relevant considerations to be kept in mind while deciding the question of reinstatement as well as payment of back wages. In DeepaliGunduSurwase Vs. Kranti Junior AdhyapakMahavidyalaya(D.Ed.). It was held that in case of wrongful termination of service, reinstatement with continuity of service.

Yet again their Lordships of the Hon'ble Supreme Court in Raj Kumar Dixit Vs. Vijay Kumar GauriShanker (2015) 9 SCC 345, on the question of reinstatement of workman after his retrenchment is declared void ab initio have held as under:-

> ***"The High Court has exceeded in its jurisdiction in setting aside the Award passed by the Labour Court in awarding reinstatement of the Appellant-workman in is post along with 50% back-wages which is erroneous in law as the High Court has not noticed the fact that the appropriate Government has referred the dispute to the Labour Court for its adjudication of the points of dispute referred to it. Since, there was non-compliance of the mandatory requirements as provided under the provisions of the Act by the Respondent-firm at the time of passing an order of termination against the Appellant-workman, therefore, the same has been held to be bad in law and as such it should have awarded full back-wages to the workman from the date of termination till the date of passing the Award unless the employer proves that the workman was gainfully employed during the aforesaid period which fact is neither pleaded nor proved before the Labour Court."***

Likewise, Hon'ble Supreme Court in Raj Kumar Vs. Director of Education and others (2016) 6 SCC 541, have ordered that retrenchment of the service of the workman was in violation of Section 25(F)(a), (b) and (c) of the Industrial disputes Act, 1947 and have ordered the reinstatement of the petitioner with full back-wages. Their Lordships have held as under:-

> ***"For the reasons stated supra, we are of the view that the impugned judgment and order dated 28.07.2008 passed by the Delhi High Court is liable to be set aside and accordingly set aside, by allowing this appeal. The retrenchment of the appellant from his service is bad in law. The respondent-Managing Committee is directed to reinstate the appellant at his post. Consequently, the relief of back-wages till the date of this order is awarded to the appellant, along with all consequential benefits from the date of termination of his services. The back-wages shall be computed on the basis of periodical revision of wages/salary. We further make it clear that the entire amount due to the appellant must be spread over the period between the period of retrenchment and the date of this decision, which amounts to 13 years, for the reason that the appellant is entitled to the benefit under Section 89 of the Income Tax Act. The same must be complied with within six weeks from the date of receipt of the copy of this judgment."***

It is thus, clear from the ratio of the above case law that reinstatement of service along with back wages can always be ordered by this Court having due regard to the circumstances of the case.

In the case on hand, even the management itself has referred the case of workman vide Exb.W9 for her regularisation. Admittedly, she has put more than 8 years of service and was terminated in the prime of her life with no source of income. She is virtually living in a state of penury. The management has also not given any evidence that workman is in employment with some other organisation after her termination. In such circumstances, it is legitimate to presume she is out of service.

There is no merit in the contention of the management that workman is a casual or temporary workman as such, she does not fall within the definition of workman under Section 2(S) of the Act. This question has been answered by the Hon'ble apex court in the case of Devinder Singh Vs. Municipal Council, Sanaur, which is as under:-

> ***"The source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(S)of the Act. The definition of workman also does not make any distinction between full-time and part-time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(S) from which it can be inferred that only a person employed on regular basis or a person***

employed for doing whole-time job is a workman and the one employed on temporary, part-time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."

In view of the above discussion, it is held that the termination of the services of the workman is totally illegal and arbitrary and against the provisions of the Industrial Disputes Act, 1947. Consequently, the workman is entitled for reinstatement in service with 50% back wages.

A. C. DOGRA, Presiding Officer

नई दिल्ली, 24 मई, 2018

का.आ. 861.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, उत्तर रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 1, दिल्ली के पंचाट (संदर्भ संख्या 106/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.05.2018 को प्राप्त हुआ था।

[सं. एल-41011/31/2013-आईआर (बी-I)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 24th May, 2018

S.O. 861.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 106/2013) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the industrial dispute between the management of Northern Railway and their Workmen, received by the Central Government on 24.05.2018.

[No. L-41011/31/2013-IR (B-I)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT No. 1: ROOM No. 511, DWARKA COURT COMPLEX, SECTOR 10, DWARKA, DELHI

ID No. 106/2013

Shri Kumod Mishra, Mahamantri,
Bedroll Attendants Contractors Workers Union,
Hazrat Nizammuddin Railway Station,
C/o Bhartiya Mazdoor Sangh, 5239, Ajmeri Gate,
Delhi – 110 006 …Workman

Vs.

1. The Senior Mechanical Engineer (C & W),
   DRM Office, Northern Railway,
   State Entry Road,
   New Delhi – 110 001
2. The DRM (P),
   DRM Office, Northern Railway,
   Senior Section Engineer,
   C&W Coaching Depot., Hazrat Nizammuddin,
   New Delhi …Managements

AWARD

In the present case, a reference was received from the appropriate Government vide letter No.L-41011/31/2013-IR(B-1) dated 15.07.2013 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, (in short, the Act) for adjudication of an industrial dispute, terms of which are as under:

'Whether the action of the management of Northern Railway in not regularizing the employment of ShriKumod Joshi & 201 others (as per annexure) is legal and justified? To what relief the workers are entitled to?'

2. Parties were put to notice and upon appearance claimants herein (202 in number) filed statement of claim with the averments that the claimant ShriKumudMishra and 201 workmen have been working for the management through different contractors for the last 12 years on the post of Bed Roll attendants. They have been performing their duties sincerely and honestly and are being paid wages below the minimum wages prescribed under the law. All the claimants are members of the union which is duly registered.

3. The claimant approached the officials of the management stating that the work being performed by them is regular and perennial in nature and regular workmen have already been engaged by the management for doing similar job. Management did not pay any heed to the various demands made by the claimant. Workman also impressed upon the management that they are being used as bonded labour by various contractors and their services are being hired and fired by the contractors.

4. Claimants, through their union, sent letter to the management on 23.04.2012 wherein various demands were raised. They have also demanded equal pay alongwith other workers for performing similar job with the Indian Railways and when the management did not pay any heed, matter was taken before the Conciliation Officer. It was also brought to the notice of the Conciliation Officer that the contractor is violating provisions of Section 7,10, 12, 21 and 29 of the Contract Labour (Regulation & Abolition) Act, 1970. After failure of the conciliation proceedings, the above reference was made by the appropriate Government.

5. Claim was contested by the management who filed reply thereto and took various preliminary objections, inter alia of maintainability. It has been alleged that with a view to provide essential and quality service to the passengers, Northern Railway has outsourced various services such as catering, linen distribution, onboard cleaning and house-keeping through professional agencies. It was on the basis of the above said policy and extant rules was outsourced to private contractors for which tenders were floated and work is allotted to such contractors for 1-2 years as per the terms and conditions. Railway has no role whatsoever in the said work. It is purely the individual interest of such workmen that they have been seeking employment from different contractors. Contractors are bound to comply with the various provisions of the Act. Management has denied the other averments made in the statement of claim. On merits, it is denied that that the contractor is not paying the workmen their proper dues.

6. On the basis of the pleadings of the parties, this Tribunal vide order dated 29.11.2013 framed the following issues:

(1) Whether there is privity of contract between the claimants and the management?

(2) As in terms of reference

7. Claimant , in order to prove their case against the management, examined ShriKumod Mishra as WW1, who filed his affidavit Ex.WW1/A. He also relied on documents Ex.WW1/1 to Ex.WW1/41. Management, in order to rebut the case of the claimant, examined Shri Raj Kumar, Divisional Mechanical Engineer as MW1. He tendered in evidence his affidavit Ex.MW1/A and also relied on document Ex.MW1/1.

8. I have heard Shri B.S, Rawat, A/R for the claimant and Shri Anil Kumar Meena, Senior Section Officer for the management.

Findings of issue No.(i) and (ii)

9. Both these issues are inter-connected as well as inter related, as such they are being taken up together for the purpose of discussion. It is pertinent to note here that the management has come with the plea that they have outsourced the work of catering, linen distribution, onboard cleaning and house-keeping through professional agencies. However, name of the private contractor has not been mentioned in the written statement. Further, management was also directed by this Tribunal vide order dated 07.03.2014 to produce the record relating to contract agreement, licence and charges paid by the contractors. During the course of arguments, it was fairly conceded by the A/R for the management that the claimants have been working in Indian Railways since 2009.

10. As discussed above, stand of the management is that the work has been outsourced to private contractors. However, the management has not filed any contract agreement so as to appreciate the terms and conditions of the said agreement nor there is any proof of certificate of registration in terms of section 7 of the Contract Labour (Regulation & Abolition) Act, 1970 (in short the CLRA Act). Contract has also not stepped into the witness box as he was never examined by the management. Resultantly, there is no proof whether the said contractor was duly licenced as required under Section 12 of the Act. It is, further, clear from pleadings of the parties as well as evidence on record, that bed roll distribution work is regular and perennial in nature, as Indian Railways is moving throughout the country 24 hours and staff is required to provide necessary house keeping as well as changing bed sheets in the various trains where such facility is provided.

11. At this stage it is appropriate to refer to the statement of ShriKumod Mishra whose affidavit Ex.WW1/A which is on the same lines as the averments contained in the statement of claim. A bare perusal of the affidavit would show that the claimants have been working under supervision and control of the management and having been shown to be working under the so called contractors by the management. This witness has also stated that the workers are not being paid minimum wages and complaint in this regard was made against the contractor. He has also tendered in evidence documents Ex.WW1/1 to Ex.WW1/41. Management has also issued identity cards to the various workmen.

12. Management has cross examined Shri Raj Kumar as MW1 and his affidavit is Ex.MW1/A. He was cross examined in length and he has admitted that the overall supervision of the workmen is with the management and officials of the management assigned duties from time to time to the said claimants. He further admitted that even at present

supervision and control over the workmen is that of the management though this work is at present being done through contractors. He is not aware whether the contractor has obtained licence as required under section 12 of the Contract Labour (Regulation & Abolition) Act, 1970 and whether the management is duly registered under the said Act. He admitted that travel authority Ex.WW1/8 to Ex.WW1/19 has been issued by the management. He also admitted issuance of identity card/permit card Ex.WW1/40(colly), which bears seal and signatures of the management. When this witness was further cross examined on February 1, 2017, he has produced copy of agreement Ex.MW1/W2 as well as provident fund and ESI deduction which are reflected in Ex.MW1/W3. He has also admitted that work of linen distribution in the passenger coaches is regular and permanent in nature. He has also named the present contractors as M/s Aroon Aviation Services Pvt. Ltd. to whom the contract has been given from 15.01.2017. Management has not taken pains to examine any of the contractors so as to prove that the overall supervision and control upon the workmen is that of the contractor to whom work has been outsourced by the management in accordance with the contract agreement. No official has been examined to prove that the so called agreements which have been filed b the management . Law in this regard is fairly settled that in case party to a case does not want to prove vital documents are required under the law nor examined any witness in support of the stand taken in their respective pleadings, this court can always draw adverse inference against the said party.

13. Now, the primary question which arises for consideration is whether the workman were in the employment of management or were employed by contractors. Equally important is the fact that agreement between the management and the contractor is genuine or simply a sham and camouflage so as to deny status of workmen under the principal employer herein. In this regard, it is pertinent to refer to Steel Authority of India Ltd. and others Vs. National Union Waterfront Workers and others (2001) 7 SCC 1, wherein the Hon'ble Supreme Court considered extensively various provisions of the Industrial Disputes Act, 1947 as well as Contract Labour Act, 1970 alongwith relevant notification issued under Section 10 of the Contract Labour Act, 1970. A critical appraisal of the above judgement would show that the Hon'ble Apex Court has taken into consideration the entire spectrum of the case law on the subject and held in para 107 as under:

> 107. An analysis of the cases, discussed above, shows that they fall in three classes: (i) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the industrial adjudicator/court ordered abolition of contract labour or because the appropriate Government issued notification under Section 10(1) of the CLRA Act, no automatic absorption of the contract labour working in the establishment was ordered; (ii) where the contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed, such cases do not relate to abolition of contract labour but present instances wherein the Court pierced the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited; (iii) where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the services of a contractor the courts have held that the contract labour would indeed be the employees of the principal employer.

14. Ratio of the above judgement has been cited with approval in all the subsequent pronouncement by the various High Courts as well as the Hon'ble Supreme Court and while making various conclusions, ratio of the law in Hussanbhai case (three judge Bench) was approved and ratio of the judgement in Air India Statutory Corporation Vs. United Labour Union (1997) 9 SCC 377 was partly overruled prospectively. It was also made clear that neither Section 10 of the Contract Labour Ac nor any other provisions under the Act, whether expressly or by necessary implication provides for automatic absorption of the contact labour on issuance of notification by the appropriate Government under sub-section 1 of Section 10 prohibiting employment of contract labour in any process, operation or other work in any establishment. Mater is to be decided judiciously by the Industrial Adjudicator where a contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contractlabour for the work of the establishment under a genuine contract or is merely a ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit there-under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will be treated as employees of the principal employer who shall be directed to regularize services of the contract labour in the establishment concerned, subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder:

> (6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the concerned establishment has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

15. This Tribunal has to keep one thing in mind that the Industrial Disputes Act as well as Contract Labour Act are essential and beneficial legislation and the scheme of the Contract Labour Act 1970 is to regulate conditions of workers

under the contract labour system and to provide for its abolition by the appropriate Government as provided under Section 10 of the said Act. Section 12 of the said Act bars a contractor from undertaking or executing any work through contract labour, except under and in accordance with a licence issued. Section 23, 24 and 25 of the Act makes contravention of provisions of the Act punishable there-under. There is also requirement for the principal employer of the establishment to get itself registered under the Act so as to avail the benefit of provisions of the Act.

16. In Management of Ashok Hotel vs Their Workmen decided on 19.02.2013 in WP(C) No.14828/2006 similar question was involved wherein it was a case where various workmen were working continuously as safaiwala/Housemen in the kitchen department etc. and they were alleged to be working directly under the contractor who has entered into a contract with the principal employer, i.e. Ashok Hotel. Further, contract in the said case was also held to be sham and camouflage so as to deny direct relationship of employer (Ashok Hotel) and the workmen.

17. In the case on hand, as stated above, the management has not examined any of the contractors whose names are mentioned in the written statement so as to prove its stand that it was the contractor who is supervising and controlling their work on the spot. Rather, it has been admitted by MW1 that the claimants are working on the directions of the officials of the management who were assigning work to them. Management has also not placed on record any of the contract documents so as to ascertain the real terms and conditions of the documents. Even if it is assumed that only the contractors were being changed from time to time, in that eventuality also, management was required to file copy of such documents and also to examine some of such contractors so as to prove that such contractors are having effective control over the work of the claimants herein. In the absence of any evidence, this Tribunal has to rely upon the evidence adduced by the claimants herein. Admittedly, services being performed by the claimants herein is in connection with the work of the establishment and aforesaid contractors are simply name-lenders as they have, in fact, no control of any kind over the claimants herein. Since the claimants herein are working for the last 12 years as is clear from their evidence, as such, the workmen is required to be considered as employees of the management.

18. In Durgapur Casual workers Union vs. Food Corporation of India(2015) 2 SCC 786, question of sham, bogus or such contract labour was considered by Hon'ble Apex Court and the management in the said case also came with the plea that the workmen were directly employed by the contractors as contract labour and as such, there was no relationship of employer and employee between the management and the workmen. Matrix of the case also shows that Food Corporation of India, i.e. the management had set up rice mill which was being run by successive contactors who have engaged contract labour. Rice mill was ultimately closed in the year 1990-91 and workers were employed by the Corporation as casual labour on daily basis. Later on, such workers raised an industrial dispute for regularization of their services as they were working under various contactors since long but were doing work for the management who was exercising supervisory control over them. Management also came with the pleading that demand of the workmen was in fact illegal and they were simply engaged as casual labour. Tribunal as well as Hon'ble High Court passed award in favour of the workman directing regularization of their services and their retrenchment by Food Corporation of India was held to be illegal. In intra court appeal, Division Bench of High Court set aside the judgement of the Single Judge, as such, matter was taken to the Hon'ble Apex Court who upheld the order of the Single Judge of the High Court as well as that of the Industrial Tribunal. It was also observed that FCI had committed unfair trade practice and terminated their services illegally instead of absorbing them. Contention of the management that their employment was to the contrary to the directions given by the Constitution Bench of Hon'ble Apex Court in Uma Devi case was rejected by the Hon'ble Apex Court by observing as under:

> "34. It is true that the case of Dharwad District PWD Literate Daily Wage Employees Association vs. State of Karnataka (1990 2 SCC 396) arising out of industrial adjudication has been considered in Umadevi(3) (2006 (4) SCC1) and that decision has been held to be not laying down the correct law but a careful and complete reading of decision in Umadevi (3) leaves no manner of doubt that what this Court was concerned in Umadevi (3) was the exercise of power by the High Courts under Article 226 and this Court under Article 32 of the Constitution of India in the matters of public employment where the employees have been engaged as contractual, temporary or casual workers not based on proper selection as recognized by the rules or procedure and yet orders of their regularization and conferring them status of permanency have been passed.
>
> 35. Umadevi(3) is an authoritative pronouncement for the proposition that Supreme Court (Article 32) and High Courts (Article 226) should not issue directions of absorption, regularization or permanent continuance of temporary, contractual, casual, daily wage or ad-hoc employees unless the recruitment itself was made regularly in terms of constitutional scheme.
>
> 36. Umadevi(3) does not denude the Industrial and Labour Courts of their statutory power under Section 30 read with Section 32 of MRTU & PULP Act to order permanency of the workers who have been victim of unfair labour practice on the part of the employer under item 6 of Schedule IV where the posts on which they have been working exists. Umadevi (3) cannot be held to have overridden the powers of Industrial and Labour Courts in passing appropriate order under Section 30 of MRTU & PULP Act, once unfair labour practice on the part of the employer under item 6 of Schedule IV is established."

19. It is clear from the ratio of the law discussed in the above authorities that the management was required to prove the contract documents /agreements so as to prove that the workmen herein were directly working under the control and supervision of the said contractors. Workmen have been working regularly with the management and there is simply change of contractors from time to time which clearly shows that the contractors engaged by the management are simply name lenders and the above contracts are simply sham and camouflage so as to deprive the claimants herein of benefits of their being in the employment of the management. Thus, the contention of the claimant that there is no privity of contract between the managements and the contractor is without merit and is liable to be rejected.

20. Now, the other vital question is whether the claimants herein can be considered for relief of regularization in the employment of the management or not. Learned authorized representative for the management, during the course of arguments, stated that as and when posts fall vacant the workmen who are eligible for the post are always considered against the said vacancies. Those claimants who are not having the requisite qualification cannot be regularized nor permanent status can be conferred upon such employees. To my mind, relief of regularization cannot be claimed as a matter of right by the claimants simply because such workman are in the employment with the management for several years. During the course of arguments learned authorized representative for the claimant relied upon the case of Maharashtra State Road Transport vs Casteribe Rajya P Karamchari Sangathana, Civil Appeal No.3433 of 2007 decided on 28.08.2009 wherein the Hon'ble Apex Court ordered regularization of the employees and gave them permanent status. In fact, it was a case of unfair labour practice wherein complaints were made by the workmen against the management. In the above case, Hon'ble Apex Court has also considered for grant of equal pay for equal work as well as conferment of permanent status. Management in the said case contended the plea of the workmen on the grounds that the Hon'ble Apex Court in number of cases has deprecated issuance of directions being given by some courts for regularization of temporary or casual employees as permanent workers on the grounds that such persons have worked for considerable length of time. It is further clear from the above that the two workers who have filed complaint would get permanent status as well as equal wages which their regular counterparts are getting and the said employees were also fulfilling the qualification and requisite conditions governing regularization of their services. In the said case, directions were given under Article 142 of the constitution of India which has residuary powers which is not available with this Tribunal. There are a number of judgements that question of regularization can be considered by the Tribunal and directions for regularization would be made by this Tribunal only when recruitment has been made in accordance with the norms and there is also policy for regularization of such employees. To my mind, ends of justice would be mad if directions in the present case is given to the management to consider the claimants herein for regularization as and when posts fall vacant. It was also conceded during the course of arguments by the learned authorized representatives for the parties, names of eligible workmen are considered every time if such workmen fulfil criteria laid down by the management. In the present case no policy of regularization has been filed on behalf of the management and it is very difficult for this Tribunal to hazard a conclusion regarding such a policy. However, Hon'ble Apex Court in a number of case has strongly deprecated the practice being followed by most of the managements to engage workers as temporary or casual for a number of years and not to make them permanent even after considerable period of time. This is clearly against the rule of law and it defeats the very purpose of industrial disputes act which is meant to ameliorate the conditions of the poor workmen. Having regard to the above, this Tribunal is of the view that the claimants herein are in the employment of the management through the so called contractors and they are liable to be considered in future for regularization. An award is, accordingly, passed. Let a copy of this Award be sent for publication as required under Section 17 of the Act.

Dated : May 15, 2018

A. C. DOGRA, Presiding Officer

नई दिल्ली, 24 मई, 2018

का.आ. 862.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण औरंगाबाद के पंचाट (संदर्भ संख्या 1800057/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.05.2018 को प्राप्त हुआ था।

[सं. एल-12025/01/2018-आईआर (बी-I)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 24th May, 2018

S.O. 862.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID No. 1800057/2015) of the Central Government Industrial Tribunal-cum-Labour Court Aurangabad as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their Workmen, received by the Central Government on 24.05.2018.

[No. L-120251/01/2018-IR (B-I)]

RAVI KUMAR, Section Officer

ANNEXURE

LABOUR COURT (II), AURANGABAD
(Presided over by V.S. Hingne, LL.M.)

Ref. IDA No. 1800057/2015 **Exh.No.O -4**

CNR No. : MHLC20 – 000550 –2015

First Party : **State Bank of India**

Through, its Manager, Kannad Branch,
At Post Kannad, Dist. Aurangabad.

VERSUS

Second Party : **Nitesh Rambhul Bed**

Age : 29 Years, Occupation : Nil R/o. Nitin Nagar, Kannad
Post Kannad, Dist. Aurangabad.

Appearances :

First Party : Adv. Shri Prakash B. Paithankar

Second Party : Adv. Shri Kiran P.Shinde

Reference for Reinstatement, Back-wages and Continuity of Service

JUDGMENT

(Delivered on this 21st Day of March 2018)

Orally appointed and orally terminated temporary employee, is seeking reinstatement, continuity and back-wages.

Parties to dispute:

2. **First Party** State Bank of India, (in short, **Bank**) is Nationalized Indian Bank.

Second Party Nitesh Rambhul Bed (inshort, **Nitesh**) worked as Safai Kamgar with Bank.

Case of Nitesh / Second Party (Statement of Claim, Exh.U-4) in short

3. On 19.04.2008, Nitesh was interviewed by Bank and was appointed as Peon, by following due procedure of law. Accordingly, Nitesh used to clean rooms and furniture of bank, he used to bring tea, lunch for staff, he used to perform numerous banking functions relating to JandhanYojna, ATM Register, Cheque Clearing, correspondence, Pass book entries, etc. After 7 years of sincere service, Bank insisted that Nitesh should work through contractor, for which Nitesh was not ready. Hence, Bank-Manager Mr. Saurabh, in July-2015, orally terminated Nitesh. Throughout 7 years, Nitesh has completed 240 days of service every year and he has become permanent employee of Bank. However, while terminating his service, Bank did not issuedshow cause notice and did not subjected him to inquiry. Act of Bank amounts to unfair labour practice, because of which Nitesh, his aged-mother and kids are suffering on social and economic fronts. Hence, he has prayed for reinstatement, continuity of service and back-wages from June with 12% interest.

Case of Bank/First Party (Written Statement, Exh.C-4) in short:

4. Bank is public institution, wherein appointments and recruitment are done as per public policies. Nitesh was engaged by Bank on temporary basis for doing cleaning work during 08:00 Hrs to 10:00 Hrs. He worked intermittently without continuity. In July-2015, Bank appointed contractor for said work of cleaning. As per Bank rules, casual, temporary and irregular appointment is not permissible. Hence, Nitesh cannot claim regular or permanent appointment nor he is entitled for permanency, reinstatement, retrenchment compensation and other reliefs. Hence, reference should be dismissed with costs.

5. Issues (**Exhibit O-3**) findings and reasons are as follows:

	ISSUES	**FINDINGS**
1.	Whether Nitesh prove employer-employee relation ship between himself And Bank?.....	**In the Affirmative.**
2.	Does Nitesh prove that, termination order of July-2015, issued by Bank, is illegal?.....	**In the Affirmative.**
3.	Is Nitesh entitled for reinstatement, Continuity and back-wages?….....	**For compensation.**
4.	Is Bank entitled for costs?…	**In the Negative.**
5.	What award?.....	**As per final order.**

REASONS

6. Evidence of Nitesh:

Exh.U–8	:	Evidence affidavit of Nitesh Rambhul Bed
Exh.U–11 to U–15	:	Photographs
Exh.U–16 to U–18	:	Two Passbooks of Nitesh
Exh.U–19 to U–24	:	खरेदीची यादी Dt.08.03.2013, 08.04.2013, 26.06.2013, 04.03.2015, 24.03.2015 and 15.06.2015 respectively.
Exh.U–25 to U–33	:	Pity Cash vouchers Dt.09.11.2009, 16.11.2009, 19.11.2009, 26.11.2009, 02.10.2009, 14.01.2010, 15.01.2010, 20.01.2010 & 25.01.2010.
Exh.U–34	:	9 Pages from charges backup register.
Exh.U – 35 to U – 42 & 59	:	Applications Dt. 03.07.2010, 05.08.2010, 30.07.2011, 26.06.2012, 27.09.2012, 01.11.2012, 30.11.2012 & 30.01.2013, preferred by Nitesh seeking मानधन.
Exh.U–43 to U–45	:	Bills regarding lunch and breakfast.
Exh.U–46	:	Charges Register.
Exh.U–47	:	Notice Dt. 09.09.2014 issued by SDO Kannad to Bank.
Exh.U–48	:	Reply by Bank to Exh. U-47.
Exh.U–49 toU–52, 54, 55, 57, 58, 62, 64 & 65	:	Miscellaneous expenditure Bills and Cleanliness Bills
Exh.U – 53, 56, 60, & 65	:	Honorarium Bill - 02.12.2014, 30.11.2015, 30.03.2015, 24.04.2015 & 25.05.2015.
Exh.U – 53, 56, 60, 61 & 63	:	Honorarium Bill - 02.12.2014, 30.11.2015, 30.03.2015, 24.04.2015 & 25.05.2015.

7. Evidence of First Party – Bank :

Exh.C-8	:	Evidence affidavit of Saurabh Bhaurao Sagajkar.
Exh.C-11	:	Reference book of staff matters of Bank.

8. Heard Adv. Shri Shinde for Nitesh and Adv. Shri Paithankar for Bank. Perused record.

Reasons as to Issue No.1:

9. Nitesh claimed that, he worked as Peon / Helper, with Bank from 19.04.2008 till July-2015. He did not pleaded specific date of his termination from the month of July. Bank claimed that, Nitesh was mere casual temporary and irregular employee of Bank. It means, Bank is admitting that Nitesh worked with it.

Once Bank admitted that, Nitesh worked with it, then being employer, burden was on Bank, to specifically plead date of joining and termination of Nitesh. However, in WS (Exh.C-4), it did not disclosed those specific dates. So, contentions of Nitesh, being unchallenged, will have to be accepted. Hence, it is held that, ***Nitesh worked with Bank from 19.04.2008 till July-2015 i.e . till 01.07.2015.***

10. Nitesh contended that, for his daily work, Bank used to pay him, monthly honorarium of ₹.1,500/-. To support his claim, Nitesh filed letter at Exh.U-59. This letter is admitted by Bank. Perusal of this letter shows that, through it, *Nitesh has informed Bank that, he has received his honorarium of ₹.1,500/- for February-2015 from the bank, and that his honorarium for March-2015, be deposited in his A/c No. 30364930154*. So, this letter proves that, ***Bank was paying monthly honorarium of ₹. 1,500/ -to Nitesh .*** Accordingly, it is held so.

11. Bank contended that, Nitesh was casual, temporary and irregular worker. In Para No. 1.4 and 1.5 of its WS, Bank pleaded as:

1.4 In fact, the Second Party was engaged on casual/temporary basis by the Branch, who had/have no authority to appoint any person in such category. Such engagements / appointments are and were illegal / irregular and impermissible under the rules of the Bank. Such illegality cannot be perpetuated for indefinite period.

1.5 This Hon'ble Tribunal cannot be used by the Second Party to perpetuate the illegality, by seeking the reinstatement of the Second Party, whose very engagement from its inception is illegal.

Thereafter, Bank relied on its reference book (Exh.C-11), which states that :

appointment of temporary employees in clerical cadre /subordinate cadre in the bank is totally prohibited.

Through above pleading and document, Bank tried to canvas that, *appointment of temporary employees in bank is totally prohibited* and hence, appointment of Nitesh, is illegal.

12. In backdrop of above contentions, question arises as, if appointment of Nitesh was not permissible, then why Bank continued him from 19.04.2008 to July-2015 i.e. for more than 7 years? Another question arises is, why Bank regularly paid him monthly honorarium of ₹.1,500/-? Bank did not gaveany explanation about same. It is not its case that, it got said knowledge about irregular / illegal appointment at belated stage. Bank, being Nationalized Institution, it can be presumed that, it was aware of Rules and Regulations of appointment at very inception of every appointment. If, despite that, Bank is appointing person to do menial work, by overlooking its own rules, then it will have to be inferred that, Bank did it with knowledge. Further, considering menial nature of job, employee who is so appointed cannot be blamed. Things would have been different had job been of nature of clerk or officer. Lastly, question also arises, that, if on 19.04.2008, if appointment of Nitesh was done contrary to Bank rules, then what action bank took against its officer, who employed Nitesh against Bank rules. Again, Bank is silent on this aspect. It isnot disclosing name of said officer. Whatever case may be, as Bank itself has appointed, continued Nitesh on service and also paid him regular monthly honorarium, then, now, no importance can be given to belated defense of Bank that, appointment of Nitesh was contrary to its rules. So no fault can be assigned to appointment of Nitesh.

13. It has been held that, Nitesh worked with Bank from 19.04.2008 to 01.07.2015. Bank has not come with case that, during aforesaid period, Nitesh was irregular in his duties, or irregular in attendance or he used to remain absent on duties or he was served with memos or charge-sheet regarding any minor or major misconduct. No such specific instances are quoted or no such documentary evidence is lead by Bank. In absence of contrary, it will have to be held that, during aforesaid period, service of Nitesh was continuous and that, Nitesh completed 240 of continuous service during every year, especially, during year preceding his termination. It means, Nitesh, has become ***deemed employee*** of Bank. For this reason, Nitesh is entitled for protection U/Sec. 25 (B) of Industrial Disputes Act, 1947.

Thus, Nitesh has established employer-employee relationship between Bank and himself. Hence, Issue No.1 is answered in affirmative.

Reasons as to Issue No. 2:

14. Once, an employee completes more than 240 days of continuous service with employer, then he becomes entitled for protection U/Sec.25 (F), 25 (G), 25 (H) of the ID Act. These provisions mandates that, if such employee, is to be retrenched, then:

- Employer needs to issue one months notice in writing indicating reasons for retrenchment,
- *In case if, notice is not issued, then such employer must pay wages for the period of notice, to such employee,*
- *else, employer must pay compensation which is equivalent to 15 days of average pay for every completed year of continuous service,*
- *employer shall ordinarily retrench workman who was last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman,*
- *if workmen is retrenched, and employer proposes to make fresh employment, then employer should give opportunity and preference to retrenched workmen over others.*

It is not case of Bank that, it has complied any of above formalities. It means that, Nitesh, who was in continuous service of the Bank was terminated without following due procedure of law. Accordingly, it is held that, oral termination of Nitesh, is not harmoniousness with provisions of ID Act. Hence, Issue No. 2 is answered in affirmative.

Reasons as to Issue No. 3:

15. Nitesh has relied upon documents at Exh.U-19 to U-65. About these documents, Nitesh during his cross-examination (by Bank), deposed as:

मान्य आहे कि, नि. क्रं. यु–33 ते नि.क्रंयु–65 हे बॅकेचे
कार्यालयीन दस्त आहेत, मान्य आहे कि, हे दस्त बॅकेतून घेतांना
मी परवानगी घेतली नव्हती, साक्षीदार स्वतः असे सांगतात कि,
त्यांगनी शाखाधिकारी यांना विचारुन ते दस्त मिळवले होते मी
ज्या शाखाधिकारी यांची परवानगी घेतली होती त्यांचे नाव
म्हणजे, सागजकर साहेब असे आहे, त्यांना मी पुराव्यासाठी
आणणार आहे किंवा नाही, यासाठी मला त्यांना विचारावे लागेल,
मी आता असे म्हणतो की, मी सागजकर साहेबांना सांगून

छांयाकीत प्रती घेतल्या होत्या, त्यावेळेस मी बॅकेतच नोकरीवर
ळोतो, त्यावेळेस न्यायालयाचा संबंध नव्हता, हे प्रकरण दाखल
करतांना मी आमच्या शाखा प्रबंधकांना माहीती दिली नव्हती की,
सदरच्या छांयाकीत प्रती मी न्यायालयीन कामासाठी वापरंणार
आहे, साक्षीदार स्वतः असे सांगतात कि, त्यांना कामावरुन कमी
केल्यानंतर त्यांनी बॅकेला विनंती केली होती।

From above questions and answers, it seems that, bank contended that, above documents are Bank documents, whose custody is exclusively with Bank and it was not permissible for Nitesh to obtain custody of these documents. According to Bank, Nitesh did so, without any authority. Hence, these documents cannot be relied upon.

16. Perusal of these documents (Exh.U-33 to U-65) shows that, these documents are photo-copies. Nitesh contended that, he has obtained photo-copies through oral permission of Branch Manager Shri Sagajkar. Said Branch Manager Sagajkar is examined by Bank at Exh.C-8. Branch Manager Sagajkar in his evidence, did not contended that, these documents were obtained by Nitesh, without his permission or by way of misrepresentation. Perusal of these documents further shows that, they are in nature of communication between Nitesh and Bank or bills relating to Nitesh. It is also not case of Bank that, these documents pertain to some other customers or that even though they are connected with Nitesh, they are very much confidential. It seems that, Bank has raised objections merely for the sake of objection. So, objection of Bank, regarding documents, will have to be overlooked.

17. As, all allegations leveled by Bank, against service of Nitesh, failed, it means that, Nitesh will have to be made entitled for reliefs sought. Nitesh has prayed for reinstatement. From pleading of Nitesh it seems that, Bank has allotted cleaning duty to contractor. Bank also contended in its Para No.2.3 (WS, Exh.C-4) that, they have appointed contractor on July-2015 for cleaning purpose. It means that, work which was being performed by Nitesh is being performed by Bank through contractor. In that circumstances, Nitesh cannot be awarded reinstatement. Hence, in view of Sec. 25 (F) of the ID Act, Nitesh can be awarded *retrenchment compensation* equivalent to *15 days of average pay for every completed years of continuous service*. In present case, Nitesh worked from 19.04.2008 to 01.07.2015 i.e. for 07 years on monthly honorarium @ ₹ 1,500/-. It means that, Nitesh would be entitled for compensation of ₹750 × 7 = ₹ 5,250/-.

18. Further, Nitesh was required to contestlitigation for almost for another 3 years. It is natural that, any employee who is ousted from service, that to suddenly, is compelled to face socio-economic hardships for himself and his entire family. Nitesh too cannot be an exception for same. However, while granting additional compensation, it also needs consideration that, First party Bank is Nationalized Bank, which deals with public money. So, considering aspects relating to both parties, it would be in interest of justice, to award only ₹.20,000/- to Nitesh, towards rigors of litigation and other sufferings. Accordingly, Nitesh is made entitled for ₹.5,250+ ₹.20,000 = ₹.25,250/-. Therefore, Issue No. 3 is so answered.

Reasons as to Issue No. 4 & 5:

19. Cost can be awarded to defending party, provided false claim is leveled against it. As, statement-of-claim preferred by Nitesh is entitled for relief, then Bank cannot be awarded compensatory costs. Hence, Issue No. 4 is answered in negative and reference is disposed off by following order.

ORDER

1. *Ref. IDA No. 1800057/2015, State Bank of India – Nitesh Rambhul Bed, is answered partly in affirmative.*
2. *It is hereby declared that, oral termination dated 01.07.2015, is illegal and hence, it is set-aside.*
3. *However, instead of reinstatement, Nitesh Bed is made entitled for compensation.*
4. *First Party State Bank of India, shall, within 2 months from date of this publication of Award, pay ₹.25,250/- (RupeesTwenty Five Thousand Two Hundred and Fifty only) to Nitesh Bed, towards cost of litigation.*
5. *In case, if said amount is not paid by Bank. within two months, then thereafter, said amount will carry interest @ 6% from date of this order till its actual realization.*
6. *Award be sent to appropriate government for its publication.*
7. *After publication of Award, both Nitesh Bed and State Bank of India, be informed about right to appeal and period of limitation to preferappeal.*
8. *After compliance and period of appeal,Clerk-of-Court and AS to classify and consign file to record room.*

AURANGABAD (*VIJAY S.HINGNE*)
Date: 21.03.2018 Judge, Labour Court (II), Aurangabad

नई दिल्ली, 24 मई, 2018

का.आ. 863.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक, भारतीय पल्स रिसर्च, कानपुर (यू.पी.) एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 94/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.05.2018 को प्राप्त हुआ था।

[सं. एल-42012/188/2001-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 24th May, 2018

S.O. 863.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 94/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow now as shown in the Annexure, in the industrial dispute between the employers in relation to the Director, Indian Institute of Plulse Research, Kanpur (UP) and their workmen, which was received by the Central Government on 16.05.2018.

[No. L-42012/188/2001-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR, Presiding Officer

I.D. No. 94/2002

BETWEEN :

Smt. Anju Tiwari D/o Sh. Suresh Chand Shukla
R/o Village, Maksoodabad
Post Tikrajanpad, Kanpur

AND

1. The Director,
   Indian Institute of Pulse Research
   G.T. Road, Kalyanpur,
   Kanpur (UP) 208024

AWARD

1 By order No. L-42012/188/2001 IR(CM-II) dated 16.04.2002 and corrigendum dated 17.09.2002 issued by the Ministry the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Smt. Anju Tewari D/o Sh. SC Shukla and the Director, Indian Institute of Pulse Research, Kanpur for adjudication.

2. The reference under adjudication is:

"KYA NIDESHAK BHARTIYA DALHAN ANUSANDHAN SANSTHAN, KANPUR DWARA SMT. ANJU TEWARI KO DINANK 12.10.2000 SE SEVA SE PRATHAK KIYA JANA NYAYOCHIT HAI? YADI NAHIN TO SAMBANDHIT KARMKAR KIS ANUTOSH KA HAQDAR HAI?"

3. The above referred ID was adjudicated by the then Hon'ble Presiding Officer/Judge's order dated 08.12.2002. The aforesaid ex-parte award was set aside vide order dated 12.07.2004.

4. As per the claim statement W-31 dated 11.8.2004, the workman has stated in brief that she was appointed on 11.08.97 to perform Clerical work, under the administrative control of the opposite party management, and she was orally assured that all the amenities would be provided to her as per legal provisions, accordingly she has continuously worked under the subordination of the management w.e.f. 11.08.97 to 11.10.2000 satisfactorily without any interruption. However, at the time of appointment no letter in writing was given to her neither she was informed that she was being engaged for any particular project, or specific period, neither any such communication was made that

her services could be terminated without adopting legal procedure in case of non availability of the work. It has further been asserted that as per the provisions of Section 25 B, I.D Act., she has performed for more than 240 days in each year, for the aforesaid period of 3 years and 2 months but her services were terminated without assigning any reason on 12.10.2000, neither any prior notice was issued, nor any retrenchment compensation/salary in lieu of the notice was given.

5. The petitioner has asserted that at the time of her termination/retrenchment, work was available but no reason was assigned, and after her termination some other persons were employed and those junior to her were retained. The principle of " First come Last Go" and provisions of Section 25G and 25H of the I.D. Act. were not followed. The management has clearly adopted unfair labour practice.

6. The petitioner has stressed that she had worked as Computer Operator w.e.f. 11.08.1997 to 11.10.2000, for a period of more than 900 days, her attendance was procured in the relevant attendance register, salary was paid as per the salary disbursement register, but before her termination salary for Sept.2000 was withheld by the management, earlier she was being paid her salary regularly at the end of the month. She had made request several times for her reinstatement and for payment of arrear but the management officials although gave oral assurance for reinstatement, did not accept her request. Claiming herself to be workman under the provisions of the I.D. Act., with the aforesaid pleadings she has made request to set aside her illegal termination order dated 12.10.2000. She has further prayed for her reinstatement with previous salary arrear and consequential benefits etc. Claim statement has been annexed with an affidavit.

7. The management in its written statement W-34, supported by an affidavit with denial of the allegations leveled in the claim statement, has asserted that the management is an autonomous body registered under the "Societies Registration Act. 1860, and the petitioner has not arrayed the Agriculture Research and Education Wing, Govt. of India and ICAR, the reference is bad in the eyes of law for non joinder/mis joinder of proper parties. The guidelines issued by the parent department are followed by the management, it is not covered under the definition of the "Industry". Functions of the opposite party have been mentioned in the written statement. Prouncements of Hon'ble Supreme Court and Hon'ble High Courts as well as Administrative Tribunals have also been referred there in. Preliminary jurisdictional objection has also been raised by the opposite party.

8. The management has emphasized that the petitioner was never employed in any capacity, neither she was ever engaged as Clerk as alleged in the claim statement. No appointment letter was ever issued. If any vacancy arises, it is filled in accordance with Rules and Regulations formulated by Govt. of India, Allegations made in the claim statement have been after thought, concocted, incorrect and misconceived, as pleaded by the opposite party. Since the applicant was never engaged by the management therefore no question arises for doing work at all for doing continuously for 240 days in a calander year. The relationship of workman and employeer has been denied by the management.

9. The opposite party has submitted that as and when any additional work is to be done in the Institute, it is carried out through contractors having valid license after inviting tenders. The opposite party has asserted that the present reference order is without jurisdiction, incomplete, ambiguous, vague and legally not maintainable under the I.D. Act. and the action taken by the management is fully proper, legal and justified, the petitioner is not entitled to any reinstatement nor any relief/compensation etc. With the aforesaid averments request has been made by the management to adjudicate the matter against the petitioner Smt. Anju Teweari.

10. While denying allegations leveled in the written statement rejoinder W-40 has been filed by the workman, reiterating the pleas taken the claim statement. Prouncements of Hon'ble Supreme Court have also been referred in the rejoinder, supported by affidavit.

11. The workman has filed certain documents as per list W-41. As per list M-44 dated 11.05.2005, the management has filed certain documents.

12. The petitioner Smt. Anju Tewari has adduced herself in evidence.

13. The management has adduced Sri J.N. Katiyar as witness. Another witness Sri A.K. Saxena was also adduced by the management. Both these witness were cross examined on behalf of the workman, on subsequent dates.

14. Written arguments on behalf of both the parties have been filed before this Tribunal.

15. Arguments of Learned Authorized Representatives of the parties, have been heard at length. Record has been scanned thoroughly.

16. The petitioner has alleged that she was employed to perform the duties of Clerk under the administrative control of management and she had continuously worked from 11.08.1997 to 11.10.2000 without interruption and with continuity. It has also been emphasized that she had worked for more than 240 days in every calander year.

17. The management has denied the so called engagement/appointment of the petitioner.

18. Learned AR for the workman has relied upon the following citations;

1. 1978 SCC (L&S) page 361
2. 1975 SCC, (L&S) page 99.
3. AIR 1970, SC Page 82.
4. AIR 1994, SC Page 541.
5. AIR 1961,SC, page 484.
6. WP (C) 11451/2005, Judgment dt. 19.10.11 Hon'ble Orissa High Court.

19. Learned AR for the opposite party submits that the aforesaid citations do not apply to the facts of the present case.

20. Learned AR for the management has referred the following citations;

1. 1978 (36) FLR, SC page 266.
2. 1981(42) FLR, Allahabad HC, page 328.
3. 1989 (10), ATC page 849.
4. 1997 (76), FLR, SC page 212.
5. 2002 (93) FLR, Jharkhand HC page 218.
6. 1988 SCC (L&S) page 845.
7. LIC, SC 1976 page 1010.
8. 1990 (60) FLR, Allahabad HC page 672.
9. 1995, LLR, HC page 1.
10. 2005(105) FLR, 383 SC
11. 2002 (94) FLR, 622 SC
12. 2006(108) FLR, 213.
13. 2005 (105) FLR, 1067 SC
14. 2004 (103) FLR, 187 SC
15. 2006 (110) FLR, 548 SC
16. 2006 (110) FLR, 552 SC
17. 2006 (110) FLR, 1212 SC

21. Learned AR for the workman asserts that the aforesaid citations do not support the version of the management, taking into account the facts of the case.

22. The petitioner Smt. Anju Tiwari in her evidence dated 15.05.2006 has asserted in examination in chief that no appointment letter in writing was given to her, neither such letter was given informing thereby that she was being employed on contract, any project, specific period or work availability etc. She has also asserted that no salary slip was given to her. No certificate regarding work and experience was given to her. In her examination she has admitted that she had not applied for any post, Sri J.N.Katiyar Farm Managers used to give salary to her. She has further asserted in the cross examination that she is not aware from which office she could get the photo copies of the said attendance register. However, she has admitted that the photo copies of the attendance register do not bear any signature of any

officer/authority. No PF deduction or any other deductions were made from her salary. On page 4 of the cross examination she has admitted that in the attendance report submitted by the Opposite party, her name has not been mentioned anywhere.

23. Sri J.N. Katiyar management witness has specifically asserted in examination in chief that no salary was ever paid to Smt. Anju Tiwari, neither attendance was procured by him, nor any service termination order was issued. Papers filed by the management have been corroborated by him in his evidence. Sri Katiyar has also specifically asserted that the petitioner has never applied for the job, neither her name was referred by Employment Exchange nor sent through Employment Exchange to the office.

24. The other management witness Sri AK Saxena has also asserted that Smt. Anju Tewari had never worked in the Institute, neither any appointment letter was ever issued to her.

25. Both the management witness have been thoroughly cross examined and nothing such material fact has come forward in their cross examination, which may create doubt on their veracity or which might support the allegations leveled by the workman.

26. So called photo copies of attendance sheet and computer service report or the alleged report do not support the version of the workman. However, document W-42/7,42/8,42/9 and 42/10 which have been admitted by Learned AR for the management, are worth mentioning in the present context. Document 42/7 relates to the report dated 12.05.1999 prepared by Sri J.L. Tickoo, regarding the results of trials conducted at different centers during Kharif-1998. In 2nd para of this report Mr. Tickoo has expressed thanks to Mrs. Anju Tewari as well for extending typing facility from time to time. Another document W-42/8, the Preamble dated 27.08.99, signed by Sri Tickoo again expresses thanks to Mrs. Anju Tewari in getting the report prepared. Document W-42/9 again expresses thanks to Mrs. Anju Tewari (including other persons as well) for doing excellent computer job. Document W-42/10 dated 12.01.2000 shows that Mrs. Anju Tewari alongwith other persons have been engaged in the Registration and Folders Committee for the Spring/Summer Group Meet 2000. These documents are not controverted by the management, and it is revealed that Mrs. A.Tewari has some how been engaged for certain activities supervised and conducted under the direction of Mr. J.L. Tickoo, Project Coordinator (MULLaRP). But no document mentions the exact period for which Mrs. A.Tewari, the petitioner in this case has been working in any office of the management/opposite party or for a period of 240 days in any calander year as pleaded in the claim statement W-31.

27. Another important fact remains that the petitioner has no where mentioned in the claim statement that she was engaged through some Private Agency or contractor to work in the Institute of the management. Why this fact has been concealed by the petitioner workman, it has not been elaborated in her evidence or arguments as well.

28. After having heard the intellect arguments of both the Learned Authorized Representatives for the parties, on perusal of the record available before the Court in the light of Rulings of Hon'ble Supreme Court/Hon'ble High Courts, it is inferred that the so called termination of the petitioner workman Mrs. Anju Tewari by the management w.e.f. 12.10.2000, can not be treated as illegal or improper. More over the alleged engagement of the petitioner as Clerk in the establishment of the opposite party, has not been established by any cogent reliable evidence. Therefore the workman is not entitled to any relief.

29. Award as above.

LUCKNOW
7th May 2018

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 24 मई, 2018

का.आ. 864.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उप निदेशक, यूनानी चिकित्सा, क्षेत्रीय अनुसंधान संस्थान, लखनऊ और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 110/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.05.2018 को प्राप्त हुआ था।

[सं. एल-42012/50/2001-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 24th May, 2018

S.O. 864.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 110/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow now as shown in the Annexure, in the industrial dispute between the employers in relation to the Dy. Director, Regional Research Institute of Unani Medicine, Lucknow and other and their workmen, which was received by the Central Government on 16.05.2018.

[No. L-42012/50/2001-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR, Presiding Officer

I.D. No. 110/2002

BETWEEN :

Sri Guru Prasad Yadav
S/o Sri Ram Avatar Yadav,
R/o Quila Mohmadi Nagar
P.O. Bhadrukh, Sector M, Aashiana
Lucknow (UP)

AND

1. The Director
   Central Counsel for Research in Unani Medicine
   61-65 Industrial Area, Opp. B Block
   New Delhi-110058

2. The Dy.Director,
   Regional Research Inst. of Unani Medicine
   163-164, Terhi Pulia, Kursi Road,
   Sector C, Jankipuram
   Lucknow

AWARD

1. By order No. L-42012/50/2001-IR(CM-I) dated 25.06.2002 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sri Guru Prasad Yadav S/o Ram Avtar Yadav, Lucknow and the Director/Dy.Director, Unani Medicine, New Delhi/Lucknow for adjudication.

2. The reference under adjudication is:

"WHETHER THE ACTION OF THE MANAGEMENT OF REGIONAL RESEARCH INSTITUTE OF UNANI MEDICINE, LUCKNOW IN NOT REGULARISING THE SERVICES OF S/SH. GURU PRASAD YADAV, BALRAM SINGH LODHI, OM PRAKASH VERMA, ASHWANI KUMAR AND MOHD. SHAKEEL W.E.F. THEIR DATE OF APPOINTMENT IS LEGAL AND JUSTIFIED? IF NOT, TO WHAT RELIEF ARE THEY ENTITLED?"

3. As per the Claim statement W-2, the workman have stated in brief that the workmen Sri Guru Prasad Yadav, and Balram Singh Lodi were employed and have been working as Chowkidar w.e.f. 01.07.96 and 01.12.96 respectively and remaining workmen Om Prakash, Ashwani Kumar and Mohd. Shakeel have been working from 1997 to June 1998 under the administrative control of opposite party at "Herb Garden" on daily wage basis, initially they were paid Rs.35/- per day which was enhanced to Rs.42.50 per day w.e.f. 01.08.1996 and subsequently @ 58/- per day. It has been asserted that the management was not maintaining any attendance register or mustor roll etc. according to Labour Law, and relevant provisions were not followed by the management. When request was made by the petitioners for regularization, they were given some assurance and were also threatened with dire consequences. Citation of AIR 1978, SC, Menka Gandhi Vs Union of India, page 597 has also been referred in the claim statement. With the aforesaid pleadings request has been made to declare the action of management in not regularizing the services as illegal, and further to get the services regularized alongwith all consequential benefits.

4. The management has filed preliminary objections M-12 where in it has been pleaded that the alleged petitioners are not "workmen", since their engagement was purely temporary arising out of the need of the work undertaken and their dis-engagement was automatic in terms of Standing Orders and the management unit is only non commercial and the appropriate Govt. in this case is U.P. Govt., and Central Govt. has not nothing to do with it. It has also been asserted that the opposite party is not covered under the definition of "Industry", as per the law laid down by the Hon'ble Supreme Court. The management has requested to reject the claim statement.

5. With strong denial of the pleadings made in the preliminary objections and written statement, rejoinder W-17 has been filed, while reiterating the pleas taken in the claim statement. Several Hon'ble Supreme Court judgments have also been cited in the rejoinder.

6. As per list C-22 several documents have been filed by the management.

7. As per list C-36, further certain documents and award adjudicated by the CGIT, Jabalpur have been filed by the management.

8. The workmen have file certain documents as per list C-39 and thereafter the management has filed copy of the Award etc. delivered by the CGIT, Jabalpur.

9. On behalf of the petitioners S/Sh. Guru Prasad Yadav, Balram Singh Lodi, Om Prakash Verma and Ashwani have adduced their evidence. They have been cross examined on behalf of the management. Mohd. Shakeel has not filed any affidavit nor adduced himself in the evidence.

10. The opposite party has filed affidavit of Mrs. Rafat Mahmooda, Dr. Idris Ahmed, Waseem Ahmed and Dr. Mohd. Arshad in evidence. Further management has filed another affidavit of Imran Ahmad, Smt. Rafat Mehamoda, Dr. Mohd. Arshad and Imran Ahmad were cross examined on behalf of the workmen.

11. During the proceedings before this Court, the conduct of the management has been very casual and lethargic. On 16.04.2010 the Hon'ble PO/Judge has proceeded ex-parte against the management, subsequently this order was recalled on 30.06.2010, further on 03.02.2012 and 09.05.2012 the Court was compelled to pass order against the management. However, again in the interest of justice applications to recall these orders was allowed on 05.12.2014 by me on the payment of Rs.1000/- as cost to be paid within 3 weeks. Further several adjournments were sought by the management. Opportunity was given to the management to ensure payment of the previous cost but this direction was not followed. Several dates w ere f ixed for hearing final arguments but none appeared in the Court on behalf of the management. Further sufficient opportunity was again provided to management and many dates were fixed but the management refrained itself from appearing in the Court and none appeared to advance arguments on behalf of the management. In such circumstances taking into account the fact that the case has been pending for more than 16 years, argument of the petitioners were heard at length. Record has been scanned thoroughly.

12. It is evident from the record that the orders passed by the competent authority under Minimum Wages Act by the RLC (C) were against the management. The pendency of the proceedings relating to Minimum Wages Act, has been admitted by Mrs.Rafat Mahmooda in her cross examination dated 16.08.2010.

13. Another management employee Mohd. Waseem, the Officer Incharge of the Management has admitted in para 2 of his affidavit M-78 that I.D. No. 02/2002 and 3/2002 have been adjudicated ex-parte. With the assertions mentioned in the affidavit, request was made to set aside the ex-parte order dated 03.02.2012 and 09.05.2012 passed in I.D. No. 110/2002.

14. Dr. Mohd. Arshad, Research Officer working the management office, in his cross examination M-83 has stated that he is not aware regarding names etc. of the labourers. However details of other labourers working from 2007 to 2015 have been given by the witness. This witness has admitted the cases filed by the labourers/petitioners under the Minimum Wages Act which have been decided in favour of the petitioners. However he is not aware regarding the working days of respective labourers. Paper no. 51/4 have been admitted by this witness.

15. Sri Imran Ahmad in his cross examination M-90 has admitted in para 7 that the concerned labourers have worked in department on daily wage basis.

16. The petitioners have supported the version taken in the claim statement and nothing inconsistent fact has come across in their cross examination, which may create any doubt on the pleadings submitted through the claim statement.

17. Learned AR for the petitioners have emphasized that the concerned workmen have worked for more than 240 days and it is very much evident from the evidence and record available before the Court. Moreover during the pendency of the case, with the malafide intention the management has terminated the services of the petitioners, who ought to have been regularized much earlier as per Rules. Learned AR for the management has refuted the allegations

leveled by the workmen and reiterated that no employee-employer relationship over existed, neither the opposite party is covered under the definition of "Industry". However, the management itself has accepted that the earlier two I.D. cases No. 2/02 and 3/02 have been adjudicated by the Tribunal against the management. No evidence has been brought on record regarding modifications or annulments of those Awards by the competent Court. Learned AR for the workmen submits that the referred two I.D. cases were related to other Sister Concern of the management and the management could not legitimately and genuinely prove its version in those cases as well.

18. Learned AR for the workmen as relied upon the following citation;

2017 (153) FLR, Labhudan Manu Bhai vs Gujrat SRTC, page 499, para 11.

19. After having heard the intellect arguments of the Learned AR for workmen, on perusal of the record available before the Court, it is inferred that the alleged action of the management relating to the four petitioners viz. Sri Guru Prasad Yadav, Balram Singh Lodi, Om Prakash Verma and Ashwani Kumar can not be adjudged as legal or justified. 5th petitioner Mohd. Shakeel has not adduced any evidence before this Court, so he is not entitled to any relief. So far as the alleged termination of the aforesaid four workmen is concerned, it is liable to be set aside. The management is directed to reinstate the said four workmen, within 10 weeks from the date of publication of the Award and it is further required to consider their regularization as per rules.

20. Award accordingly.

LUCKNOW
09.05.2018

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 24 मई, 2018

का.आ. 865.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उप निदेशक, यूनानी चिकित्सा, क्षेत्रीय अनुसंधान संस्थान, लखनऊ और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 08/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.05.2018 को प्राप्त हुआ था।

[सं. एल-42025/03/2018-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 24th May, 2018

S.O. 865.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Misc. No. 08/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow now as shown in the Annexure, in the industrial dispute between the employers in relation to the Dy. Director, Regional Research Institute of Unani Medicine, Lucknow and other and their workmen, which was received by the Central Government on 16.05.2018.

[No. L-42025/03/2018-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR, Presiding Officer

Misc. No. 08/2005

BETWEEN :

Sri Guru Prasad Yadav
S/o Late Sri Ram Avatar Yadav,
R/o Village Quila Mohmadi Nagar
P.O. Bhadrukh,
Distt. Lucknow

V/s.

1. Dy. Director,
   Regional Research Institute of Unani Medicine
   163-164, Terhi Pulia, Kursi Road,
   Sector C, Jankipuram
   Lucknow

2. The Director
   Central Council for Research in Unani Medicine
   61-65 Industrial Area, Opp. D Block
   Janakpuri, New Delhi

ORDER

The petitioner Sri Guru Prasad Yadav Singh Lodhi has moved application under section 33 of the I.D. Act, mentioning therein that he alongwith some other workmen had raised the industrial dispute pertaining to their regularization before ALC (C), after failure of the conciliation matter was referred by the Govt. for adjudication which was sent to the Tribunal. It has been alleged in the petition that during the pendency of the proceeding before the ALC(C) the employer has stopped to take work from the applicant w.e.f. 25.7.2000 on the pretext of the shortage of fund, after interference by the ALC (C) the applicant alongwith other workmen were taken back in service, and since then they have been working with some notional break. Proceedings pending under the Minimum Wages Act. as case no. 231-234/2000 have also been mentioned in the petition.

2. The workman has alleged that during the pendency of the connected I.D. case, the management has stopped to take work from him w.e.f. 23.01.2004, it amounts to retrenchment the said retrenchment is illegal and void-ab-initio, protection of Section 25F of the I.D. Act, ought to have been given since the petitioner has worked for more than 6 years continuously without any break. Contravention of Section 33 of the I.D. Act. has also been stressed in the petition. With the aforesaid averments, request has been made to declare the termination of the service of the applicant w.e.f. 23.01.2004 as illegal and unjustified. Further prayer has been made for his reinstatement with full back wages etc. The petition is supported by an affidavit of the workman.

3. The management has filed objection M-9, with strong denial of the allegations made by the workman. It has been asserted by the opposite party that the ALC (C) has no jurisdiction and petitioner is speaking lie, and contrary version has been taken by the workmen, firstly he was claiming stoppage of work from 25.07.2004, some where it is 23.01.2004. The opposite party has further asserted that the application is misconceived and is liable to be dismissed.

4. Later on reply/rejoinder W-17 has been filed by the workmen with strong denial of the counter allegations leveled in the objection filed by the management, reiterating the pleas taken in the petition filed by him.

5. The workman has filed affidavit alongwith annexures. He has been cross examined on behalf of the management.

6. The management has filed affidavit of Smt. Rafat Mehmooda M-30, Dr. Idris Ahmed, M-33, Waseem Ahmed, M-46 and Dr. Mohd. Arshad, M-47.

7. With the consent of both the parties certified photo copies of cross examination of Dr. M.Arshad and Idris Ahmad have been filed in this case.

8. Perusal of the record reveals that the conduct of the management has been very careless and lethargic, and on several occasions matter was taken ex-parte but on the request of the opposite party, the ex-parte order was recalled. However, the cost imposed by the Court was not paid to the workman and the official of the management or the Learned AR of the management refrained themselves to appear and to participate in the proceeding of the case. Again several dates were fixed, so as to give more opportunity to the opposite party to participate in the process of dispensation of justice but the management and its officers have been very negligent, and the officials and the Learned AR abstained themselves for the reasons best known to them. Undoubtedly, proceedings can not be lingered on endlessly or perpetually without any cogent and genuine reason. Under these circumstances the arguments of the Learned AR of the workman were heard at length and record has been scanned thoroughly.

9. The main allegations of the workman is that during the pendency of the connected I.D. 110/02 which has arisen with reference to the Schedule dated 25.06.2002 referred by the Govt. of India to this Tribunal for adjudication, the opposite party has with malafide intention stopped to take work from the petitioner workman w.e.f. 23.01.2004, the so called contradiction in the petition regarding the date of stoppage of work has been duly explained by the workman. The petitioner has elaborated that on intervention made by the ALC (C) the workman alongwith other colleagues was taken back in service and later on he was retrenched from 23.01.2004, as a consequence of stoppage of work.

10. The management witness Dr. M.Idris in his cross examination (recorded in I.D. 110/02 has admitted that he had not perused any record pertaining to the workman/labourer). However, he has given name of 5 persons working in the Herb Garden w.e.f. 2007 to 2015. Other management witness Sri Idris Ahmad in his cross examination (recorded in I.D. 110/02) has admitted in para 7 that the concerned petitioners have worked in the department as daily wagers and relevant muster roll should have been there in the concerned department.

11. The management has failed to corroborate its version that the petitioner had not worked beyond 12.07.2000. Learned AR for the workman has emphatically asserted that the petitioner has continued to work till 22.01.2004.

12. Another material fact has been brought to the notice of the Court. The case no. MW 231 to 234 of 2000, under the Minimum Wages Act. was adjudicated in favour of the workman vide order dated 06.07.2005 wherein the management has directed to ensure the payment of the compensation etc. to the applicants and other workmen in the respective cases. Any evidence by the opposite party to contradict this judgment has not been filed. The management did not produce the muster roll and the attendance register before the Competent Authority.

13. After having heard the learned AR for the workman and perusal of the record available before the Court, it is inferred that the alleged termination of service of the applicant w.e.f. 23.01.2004 during the pendency of the connected I.D. 110/02, can not be adjudged as legal or justified. **Provisions of Section 33 A of the I.D. Act. are mandatory in nature and it has to be followed in letter and spirit. The aforesaid termination is set aside, and petitioner is entited for his reinstatement alongwith full back wages. The arrear due, shall be paid by the management within 10 weeks,from the date of notification of the Award, failing which the petitioner will also be entitled to get interest @ 6% per annum. Petition dated 06.04.2005 is disposed accordingly.**

14. **Award as above**

LUCKNOW
09.05.2018

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 24 मई, 2018

का.आ. 866.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, वरिष्ठ मत्स्य विज्ञान वैज्ञानिक, भारत के मत्स्य सर्वेक्षण, पोरबंदर (गुजरात) एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट [संदर्भ (सीजीआईटीए) संख्या 1138/2004] को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.05.2018 को प्राप्त हुआ था।

[सं. एल-42012/145/1997-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 24th May, 2018

S.O. 866.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award [Ref. (CGITA) No. 1138/2004] of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the Senior Fisheries Scientist, Fishery Survey of India, Porbandar (Gujarat) and their workmen, which was received by the Central Government on 08.05.2018.

[No. L-42012/145/1997-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 23rd April, 2018

Reference: (CGITA) No. 1138/2004

The Sr. Fisheries Scientist,
Fishery Survey of India,
Government of India, M/o Food Processing Industries,
68, K.G. Road, Shitla Chowk,
Porbandar (Gujarat) – 360575 …First Party

V/s

Shri Ramji Naran Kotia,
C/o The Branch Secretary,
Gujarat Rajya Ardh Sahakari Audhyagik Karmachari Sangh,
215, Amardeep Complex, 2nd Floor, 2, Rajaputpara,
Rajkot (Gujarat) …Second Party

For the First Party No : Shri P.M. Rami

For the Second Party : Shri R.C. Pathak

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-42012/145/97–IR(DU) dated 10.07.1998 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the activities of the Fishery Survey of India Constitute to be that of an "Industry" under the I.D. Act and if so whether the action of the management of Fishery Survey of India, Porbandar in terminating the services of Shri Ramji Naran Kotia is legal and justified? If not, to what relief the workman is entitled?"

1. The reference dates back to 10.07.1998. After receiving the notice, the second party Ramji Naran Kotia, C/o The Branch Secretary, Gujarat Rajya Ardh Sahakari Audhyagik Karmachari Sangh,215, Amardeep Complex, 2nd Floor, 2, Rajaputpara, Rajkot, submitted the statement of claim Ex. 4 on 05.11.1998 alleging that the second party workman Ramji Naran Kotia was engaged as Khalasi cum Oilman by the first party on 01.03.1979. He worked till 28.02.1997 when as alleged by him, was terminated by oral order without a service or paying notice pay at the time of submission of his service despite the fact that the workmen junior to him were permitted to continue in service and also the first party engaged new workman. Hence his termination was violative of provisions of Section 25 F, G and H of the Industrial Disputes Act. He has further alleged that he requested the first party orally for number of times to re-engage him but to no result. Hence, he raised this dispute which is pending for adjudication in this tribunal. He has further alleged that he continued in service for 18 years from 01.03.1979 to 28.02.1997. He was paid wages at the rate of Rs. 71/- per day. The nature of work was permanent but the first party used to give him temporary brakes in the service. He was also eligible for regularisation as he worked for more than 240 days in every calendar year. He also served the first party with a notice which remain un-reply. Thus he has prayed for declaring the termination order as illegal and has also prayed for reinstatement with continuity of service along with Rs. 2000/- as legal expenses.

2. The first party The Sr. Fisheries Scientist, Fishery Survey of India, Government of India, M/o Food Processing Industries, 68, K.G. Road, Shitla Chowk, Porbandar submitted the written statement Ex. 10 on 20.05.1999 partly admitting the averments made in the statement of claim submitting that the first party organisation is a Research and Survey Organisation provided with a survey vessel with regular crew on the board of the vessel governed under the CCS Rules. Under the said rules, the regular crew members can go on leave or avail their leaves as and when they required. Being a statutory requirement in place, the crew members are availed from the local market whenever a short term vacancy arises. On regular employee being on leave, an outside person is engaged from local market as casual labour on daily rates basis in the said leave vacancy. As and when the regular crew member comes and report on duty after leave, the casual labours asked to stop coming, therefore, maintaining their seniority list does not arise. In the present case, admitting the workman engaged as casual labour from 01.03.1979 to 28.02.1997, the muster roll and the seniority list was not prepared because the vessels in the series on Meena i.e. 17.5 litre Steel Troulers were ordered decommissioned a long back and their muster roll and other reports are not available. However whatever documents were available are enclosed with the written statement and the reference is liable to be dismissed on the ground that the tribunal has no jurisdiction under Section 2 (d) (ii) (3) of the Industrial Disputes Act, 1947 as the organisation was engaged in Education, Science, Research and Training Institutions which is not covered under Industry. Second, as per recruitment rules, vacancies are to be filled 50% from CIFNET Trainees on tenure basis, 40% on promotion from Group D Staff Net Menders and remaining 10% by transfer. Accordingly, the office at Porbandar was provided training to trainees from CIFNET, Kochi and the Porbandar office was having 5 Net Menders to whom the chances were to be given first to fill up the vacancies as per the recruitment rules. Thus the applicants were not entitled for regularisation

or for a claim of continuous employment as being the casual workman. Thus the relief sought by the second party was fit to be dismissed.

3. On the basis of the pleadings, the following issues arise:

I. Whether the activities of the Fishery Survey of India Constitute to be that of an "Industry" under the I.D. Act?

II. Whether the action of the management of Fishery Survey of India, Porbandar in terminating the services of Shri Ramji Naran Kotia is legal and justified?

III. To what relief, if any, the workman is entitled?

4. All these issues are interrelated, therefore, are decided together.

5. **Issue No. I, II & III:** The burden of proof of these issues was lying on the second party workman who was examined vide Ex. 18 wherein he has reiterated the averments made in the statement of claim and has not said anything contrary in his cross-examination. In his cross-examination he has stated that he was engaged to check the engine of the vessel. He has also admitted that the he was engaged as daily wager on daily rated basis. He worked on a small vessel for 3 years, thereafter; he worked on a large vessel. These vessels were used for fish breading.

6. The first party submitted the affidavit Ex. 34 of Shri Maheshkumar Farejiya, the Director, Fisheries Survey of India who reiterated the averments made in the written statement admitting that this workman worked from 01.03.1979 to 28.02.1997 on daily rated basis on casual labour. The organisation was governed by CCS Rules and was made for research work. This workman was engaged for temporary periods on daily rate wages against leave vacancies of permanent employees.

7. I heard the arguments of the learned counsel of the parties.

8. After considering the evidences of the parties and arguments of their counsel, it is established that the first party organisation was a Research Institution in the field of fisheries breading which does not come within the definition of the "Industry". Secondly, the organisation was governed by the CCS Rules. Thirdly, the workman has failed to prove that he ever worked for more than 240 days in any calendar year. Fourthly, as per the ECS and Recruitment Rules, the workman who has not undergo the due procedure of recruitment, cannot claim regularisation.

9. However, The Hon'ble Supreme Court in The General Secretary, Coal Washeries Workers Union, Dhanbad V/s Employees in relation to the management of Dugda Washery of M/s BCCL, 2016 LLR 1123, has held that the workman who have worked for a long period must be compensated in lieu of reinstatement applying the principle underlying the decisions of this court in Ruby General Insurance Co. Ltd., V/s P.P. Chopra, (1969) 3 SCC 653 (3 Judges) and the recent case of Delhi International Airport (P) Ltd. V/s Union of India, (2011) 12 SC 449, in our considered opinion, interest of justice would be met by enhancing the amount of compensation in lieu of reinstatement/absorption and regularisation quantified of Rs. 150000/-.

10. Following the aforesaid principle laid down by the apex court, the workman worked for more than 18 years, the workman was not entitled for reinstatement as reinstatement would amount back door recruitment. Secondly, the vessels, on which the workman served, has been dismantled and thirdly, the vessels were meant for research work, therefore, it would be appropriate to award Rs. 200000/- (Rupees Two lac) as lump-sum compensation for his long period of service on the vessels as daily wages.

11. All these issues are decided accordingly and the award is also passed in the aforesaid terms. The first party is directed to pay the amount of the award which is Rs. 200000/- (Rupees Two lac) to the workman within 60 days from the publication of the award.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 24 मई, 2018

का.आ. 867.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, वरिष्ठ मत्स्य विज्ञान वैज्ञानिक, भारत के मत्स्य सर्वेक्षण, पोरबंदर (गुजरात) एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट [संदर्भ (सीजीआईटीए) संख्या 1139/2004] को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.05.2018 को प्राप्त हुआ था।

[सं. एल-42012/144/1997-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 24th May, 2018

S.O. 867.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award [Ref. (CGITA) No. 1139/2004] of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the Senior Fisheries Scientist, Fishery Survey of India, Porbandar (Gujarat) and their workmen, which was received by the Central Government on 08.05.2018.

[No. L-42012/144/1997-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 23rd April, 2018

Reference: (CGITA) No. 1139/2004

The Sr. Fisheries Scientist,
Fishery Survey of India,
Government of India, M/o Food Processing Industries,
68, K.G. Road, Shitla Chowk,
Porbandar (Gujarat) – 360575 …First Party

V/s

Shri Yusuf Khan Rehamankhan,
C/o The Branch Secretary,
Gujarat Rajya Ardh Sahakari Audhyagik Karmachari Sangh,
215, Amardeep Complex, 2nd Floor, 2, Rajaputpara,
Rajkot (Gujarat) …Second Party

For the First Party No : Shri P.M. Rami

For the Second Party : Shri R.C. Pathak

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-42012/144/97–IR(DU) dated 10.07.1998 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the activities of the Fishery Survey of India Constitute to be that of an "Industry" under the I.D. Act and if so whether the action of the management of Fishery Survey of India, Porbandar in terminating the services of Shri Yusuf Khan Rehmankhan is legal and justified? If not, to what relief the workman is entitled?"

1. The reference dates back to 10.07.1998. After receiving the notice, the second party Yusuf Khan Rehmankhan, C/o The Branch Secretary, Gujarat Rajya Ardh Sahakari Audhyagik Karmachari Sangh, 215, Amardeep Complex, 2nd Floor, 2, Rajaputpara, Rajkot, submitted the statement of claim Ex. 4 on 05.11.1998 alleging that the second party workman Yusuf Khan Rehmankhan was engaged as Khalasi cum Watchman by the first party on 01.10.1992. He worked till 31.12.1995 when as alleged by him, was terminated by oral order without a service or paying notice pay at the time of submission of his service despite the fact that the workmen junior to him were permitted to continue in service and also the first party engaged new workman. Hence his termination was violative of provisions of Section 25 F, G and H of the Industrial Disputes Act. He has further alleged that he requested the first party orally for number of times to re-engage him but to no result. Hence, he raised this dispute which is pending for adjudication in this tribunal. He has further alleged that he continued in service for 3 years from 01.10.1992 to 31.12.1995. He was paid wages at the

rate of Rs. 71/- per day. The nature of work was permanent but the first party used to give him temporary brakes in the service. He was also eligible for regularisation as he used to work for more than 240 days in every calendar year. He also served the first party with a notice which remain un-reply. Thus he has prayed for declaring the termination order as illegal and has also prayed for reinstatement with continuity of service along with Rs. 2000/- as legal expenses.

2. The first party The Sr. Fisheries Scientist, Fishery Survey of India, Government of India, M/o Food Processing Industries, 68, K.G. Road, Shitla Chowk, Porbandar submitted the written statement Ex. 10 on 20.05.1999 partly admitting the averments made in the statement of claim submitting that the first party organisation is a Research and Survey Organisation provided with a survey vessel with regular crew on the board of the vessel governed under the CCS Rules. Under the said rules, the regular crew members can go on leave or avail their leaves as and when they required. Being a statutory requirement in place, the crew members are availed from the local market whenever a short term vacancy arises. On regular employee being on leave, an outside person is engaged from local market as casual labour on daily rates basis in the said leave vacancy. As and when the regular crew member comes and report on duty after leave, the casual labours asked to stop coming, therefore, maintaining their seniority list does not arise. In the present case, admitting the workman engaged as casual labour from 01.10.1992 to 31.12.1995, the muster roll and the seniority list was not prepared because the vessels in the series on Meena i.e. 17.5 litre Steel Troulers were ordered decommissioned a long back and their muster roll and other reports are not available. However whatever documents were available are enclosed with the written statement and the reference is liable to be dismissed on the ground that the tribunal has no jurisdiction under Section 2 (d) (ii) (3) of the Industrial Disputes Act, 1947 as the organisation was engaged in Education, Science, Research and Training Institutions which is not covered under Industry. Second, as per recruitment rules, vacancy are to be filled 50% from CIFNET Trainees on tenure basis, 40% on promotion from Group D Staff Net Menders and remaining 10% by transfer. Accordingly, the office at Porbandar was provided training to trainees from CIFNET, Kochi and the Porbandar office was having 5 Net Menders to whom the chance were to be given first to fill up the vacancies as per the recruitment rules. Thus the applicants were not entitled for regularisation or for a claim of continuous employment as being the casual workman. Thus the relief sought by the second party was fit to be dismissed.

3. On the basis of the pleadings, the following issues arise:

I. Whether the activities of the Fishery Survey of India Constitute to be that of an "Industry" under the I.D. Act?

II. Whether the action of the management of Fishery Survey of India, Porbandar in terminating the services of Shri Yusuf Khan Rehmankhan is legal and justified?

III. To what relief, if any, the workman is entitled?

4. All these issues are interrelated, therefore, are decided together.

5. **Issue No. I, II & III:** The burden of proof of these issues was lying on the second party workman who was examined on Ex. 16 wherein he has reiterated the averments made in the statement of claim and has not said anything contrary in his cross-examination. In his cross-examination he has stated that he was engaged as Khalasi cum Watchman on a vessel. He has also admitted that the he was engaged as daily wager on daily rated basis. The vessels were used for fish breading.

6. The first party submitted the affidavit Ex. 22 of Shri Maheshkumar Farejiya, the Director, Fisheries Survey of India who reiterated the averments made in the written statement admitting that this workman worked from 01.10.1992 to 31.12.1995 on daily rated basis on casual labour. The organisation was governed by CCS Rules and was made for research work. This workman was engaged for temporary periods on daily rate wages against leave vacancies of permanent employees.

7. I heard the arguments of the learned counsel of the parties.

8. After considering the evidences of the parties and arguments of their counsel, it is established that the first party organisation was a Research Institution in the field of fisheries breading which does not come with in the definition of the industry. Secondly, the organisation was governed by the CCS Rules. Thirdly, the workman has failed to prove that he ever worked for more than 240 days in any calendar year. Fourthly, as per the CCS and Recruitment Rules, the workman who has not undergo the due procedure of recruitment, cannot claim regularisation.

9. However, The Hon'ble Supreme Court in The General Secretary, Coal Washeries Workers Union, Dhanbad V/s Employees in relation to the management of Dugda Washery of M/s BCCL, 2016 LLR 1123, has held that the workman who have worked for a long period must be compensated in lieu of reinstatement applying the principle underlying the decisions of this court in Ruby General Insurance Co. Ltd., V/s P.P. Chopra, (1969) 3 SCC 653 (3 Judges)

and the recent case of Delhi International Airport (P) Ltd. V/s Union of India, (2011) 12 SC 449, in our considered opinion, interest of justice would be met by enhancing the amount of compensation in lieu of reinstatement/absorption and regularisation quantified of Rs. 150000/-.

10. Following the aforesaid principle laid down by the apex court, the workman worked for more than 3 years, the workman was not entitled for reinstatement as reinstatement would amount back door recruitment. Secondly, the vessels, on which the workman served, has been dismantled and thirdly, the vessels were meant for research work, therefore, it would be appropriate to award Rs. 200000/- (Rupees Two lac) as lump-sum compensation for his long period of service on the vessels as daily wages.

11. All these issues are decided accordingly and the award is also passed in the aforesaid terms. The first party is directed to pay the amount of the award which is Rs. 200000/-(Rupees Two lac) to the workman within 60 days from the publication of the award.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 24 मई, 2018

का.आ. 868.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, वरिष्ठ मत्स्य विज्ञान वैज्ञानिक, भारत के मत्स्य सर्वेक्षण, पोरबंदर (गुजरात) एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट [संदर्भ (सीजीआईटीए) संख्या 1140/2004] को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.05.2018 को प्राप्त हुआ था।

[सं. एल-42012/143/1997-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 24th May, 2018

S.O. 868.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award [Ref. (CGITA) No. 1140/2004] of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the Senior Fisheries Scientist, Fishery Survey of India, Porbandar (Gujarat) and their workmen, which was received by the Central Government on 08.05.2018.

[No. L-42012/143/1997-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 23rd April, 2018

Reference: (CGITA) No. 1140/2004

The Sr. Fisheries Scientist,
Fishery Survey of India,
Government of India, M/o Food Processing Industries,
68, K.G. Road, Shitla Chowk,
Porbandar (Gujarat) – 360575 …First Party

V/s

Shri Asmail Ali Mohamadbhai,
C/o The Branch Secretary,
Gujarat Rajya Ardh Sahakari Audhyagik Karmachari Sangh,

215, Amardeep Complex, 2nd Floor, 2, Rajaputpara,
Rajkot (Gujarat) …Second Party

For the First Party No : Shri P.M. Rami

For the Second Party : Shri R.C. Pathak

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-42012/143/97–IR(DU) dated 20.07.1998 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the activities of the Fishery Survey of India Constitute to be that of an "Industry" under the I.D. Act and if so whether the action of the management of Fishery Survey of India, Porbandar in terminating the services of Shri Asmail Ali Mohanmadbhai is legal and justified? If not, to what relief the workman is entitled?"

1. The reference dates back to 20.07.1998.After receiving the notice, the second party Asmail Ali Mohamadbhai, C/o The Branch Secretary, Gujarat Rajya Ardh Sahakari Audhyagik Karmachari Sangh, 215, Amardeep Complex, 2nd Floor, 2, Rajaputpara, Rajkot, submitted the statement of claim Ex. 4 on 05.11.1998 alleging that the second party workman Asmail Ali Mohamadbhai was engaged as Khalasi cum Cookman by the first party in the year 1980. He worked till 04.04.1996 when as alleged by him, was terminated by oral order without a service or paying notice pay at the time of submission of his service despite the fact that the workmen junior to him were permitted to continue in service and also the first party engaged new workman. Hence his termination was violative of provisions of Section 25 F, G and H of the Industrial Disputes Act. He has further alleged that he requested the first party orally for number of times to re-engage him but to no result. Hence, he raised this dispute which is pending for adjudication in this tribunal. He has further alleged that he continued in service for 17 years till 04.04.1996. He was paid wages at the rate of Rs. 71/- per day. The nature of work was permanent but the first party used to give him temporary brakes in the service. He was also eligible for regularisation as he used to work for more than 240 days in every calendar year. He also served the first party with a notice which remain un-reply. Thus he has prayed for declaring the termination order as illegal and has also prayed for reinstatement with continuity of service along with Rs. 2000/- as legal expenses.

2. The first party The Sr. Fisheries Scientist, Fishery Survey of India, Government of India, M/o Food Processing Industries, 68, K.G. Road, Shitla Chowk, Porbandar submitted the written statement Ex. 9 on 20.05.1999 partly admitting the averments made in the statement of claim submitting that the first party organisation is a Research and Survey Organisation provided with a survey vessel with regular crew on the board of the vessel governed under the CCS Rules. Under the said rules, the regular crew members can go on leave or avail their leaves as and when they required. Being a statutory requirement in place, the crew members are availed from the local market whenever a short term vacancy arises on regular employee being on leave. An outside person is engaged from local market as casual labour on daily rates basis in the said leave vacancy. As and when the regular crew member comes and report on duty after leave, the casual labours asked to stop coming, therefore, maintaining their seniority list does not arise. In the present case, admitting the workman engaged as casual labour in the year 1980 till 04.04.1996, the muster roll and the seniority list was not prepared because the vessels in the series on Meena i.e. 17.5 litre Steel Troulers were ordered decommissioned a long back and their muster roll and other reports are not available. However whatever documents were available are enclosed with the written statement and the reference is liable to be dismissed on the ground that the tribunal has no jurisdiction under Section 2 (d) (ii) (3) of the Industrial Disputes Act, 1947 as the organisation was engaged in Education, Science, Research and Training Institutions which is not covered under Industry. Second, as per recruitment rules, vacancy are to be filled 50% from CIFNET Trainees on tenure basis, 40% on promotion from Group D Staff Net Menders and remaining 10% by transfer. Accordingly, the office at Porbandar was provided training to trainees from CIFNET, Kochi and the Porbandar office was having 5 Net Menders to whom the chance were to be given first to fill up the vacancies as per the recruitment rules. Thus the applicants were not entitled for regularisation or for a claim of continuous employment as being the casual workman. Thus the relief sought by the second party was fit to be dismissed.

3. On the basis of the pleadings, the following issues arise:

I. Whether the activities of the Fishery Survey of India Constitute to be that of an "Industry" under the I.D. Act?

II. Whether the action of the management of Fishery Survey of India, Porbandar in terminating the services of Shri Asmail Ali Mohamadbhai is legal and justified?

III. To what relief, if any, the workman is entitled?

4. All these issues are interrelated, therefore, are decided together.

5. **Issue No. I, II & III:** The burden of proof of these issues was lying on the second party workman who was examined vide Ex. 18 wherein he has reiterated the averments made in the statement of claim and has not said anything contrary in his cross-examination. In his cross-examination he has stated that he was engaged as Khalasi cum Cookman. He worked on a small vessel for 3 years, thereafter; he worked on a large vessel. These vessels were used for fish breading.

6. The first party submitted the affidavit Ex. 26 of Shri Maheshkumar Farejiya, the Director, Fisheries Survey of India who reiterated the averments made in the written statement admitting that this workman worked till 04.04.1996 on daily rated basis on casual labour. The organisation was governed by CCS Rules and was made for research work. This workman was engaged for temporary periods on daily rate wages against leave vacancies of permanent employees.

7. I heard the arguments of the learned counsel of the parties.

8. After considering the evidences of the parties and arguments of their counsel, it is established that the first party organisation was a Research Institution in the field of fisheries breading which does not come with in the definition of the "Industry". Secondly, the organisation was governed by the CCS Rules. Thirdly, the workman has failed to prove that he ever worked for more than 240 days in any calendar year. Fourthly, as per the CCS and Recruitment Rules, the workman who has not undergo the due procedure of recruitment, cannot claim regularisation.

9. However, The Hon'ble Supreme Court in The General Secretary, Coal Washeries Workers Union, Dhanbad V/s Employees in relation to the management of DugdaWashery of M/s BCCL, 2016 LLR 1123, has held that the workman who have worked for a long period must be compensated in lieu of reinstatement applying the principle underlying the decisions of this court in Ruby General Insurance Co. Ltd., V/s P.P. Chopra, (1969) 3 SCC 653 (3 Judges) and the recent case of Delhi International Airport (P) Ltd. V/s Union of India, (2011) 12 SC 449, in our considered opinion, interest of justice would be met by enhancing the amount of compensation in lieu of reinstatement/absorption and regularisation quantified of Rs. 150000/-.

10. Following the aforesaid principle laid down by the apex court, the workman worked for 17 years, the workman was not entitled for reinstatement as reinstatement would amount back door recruitment. Secondly, the vessels, on which the workman served, has been dismantled and thirdly, the vessels were meant for research work, therefore, it would be appropriate to award Rs. 200000/- (Rupees Two lac) as lump-sum compensation for his long period of service on the vessels as daily wages.

11. All these issues are decided accordingly and the award is also passed in the aforesaid terms. The first party is directed to pay the amount of the award which is Rs. 200000/- (Rupees Two lac) to the workman within 60 days from the publication of the award.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 24 मई, 2018

का.आ. 869.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, क्षेत्रीय निदेशक, भारत के मत्स्य सर्वेक्षण, पोरबंदर (गुजरात) एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट [संदर्भ (सीजीआईटीए) संख्या 1195/2004] को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.05.2018 को प्राप्त हुआ था।

[सं. एल-42011/51/2000-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 24th May, 2018

S.O. 869.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award [Ref. (CGITA) No. 1195/2004] of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in

relation to the Zonal Director, Fishery Survey of India, Porbandar (Gujarat) and their workmen, which was received by the Central Government on 08.05.2018.

[No. L-42011/51/2000-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 23rd April, 2018

Reference: (CGITA) No. 1195/2004

The Zonal Director,
Fishery Survey of India,
Government of India, M/o Agriculture, Department of A.H. & D.,
68, K.G. Road, Shitla Chowk,
Porbandar (Gujarat) – 360575 …First Party

V/s

Shri Kamlesh G. Chotai,
Ravi Kunj, Opposite Dena Bank,
Wania Wad, Near Rajkamal Studio,
Porbandar (Gujarat) – 360575 …Second Party

For the First Party No : Shri P.M. Rami

For the Second Party : Shri A.L. Saiyed

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-42011/ 51/2000–IR(DU) dated 27.02.2002/02.05.2002 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the action of the management of Zonal Manager, Fishery Survey of India in stopping Shri Kamlesh G. Chotai from work w.e.f. 30.11.1995 is just, fair and legal? If not, to what relief the workman is entitled?"

1. The reference dates back to 27.02.2002/02.05.2002. After receiving the notice, the second party Kamlesh G. Chotai, RaviKunj, Opposite Dena Bank, Wania Wad, Near Rajkamal Studio, Porbandar, submitted the statement of claim Ex. 4 on 05.11.1998 alleging that the second party workman Kamlesh G. Chotaiwas engaged as Casual Store Helper by the first party on 01.03.1988. He worked till 30.11.1995 when as alleged by him, was terminated by oral order without a service or paying notice pay at the time of submission of his service despite the fact that the workmen junior to him were permitted to continue in service and also the first party engaged new workman. Hence his termination was violative of provisions of Section 25 F, G and H of the Industrial Disputes Act. He has further alleged that he requested the first party orally for number of times to re-engage him but to no result. Hence, he raised this dispute which is pending for adjudication in this tribunal. He has further alleged that he continued in service from 01.03.1988 to 26.06.1989 and thereafter continuously up to 25.10.1990 for more than 830 days. He has further alleged that he was again re-engaged on 26.10.1990 and worked till 30.11.1995 continuously with artificial brakes. He was paid wages at the rate of Rs. 45/- per day. The nature of work was permanent but the first party used to give him temporary brakes in the service. He was also eligible for regularisation as he used to work for more than 240 days in every calendar year. He also served the first party with a notice which remain un-reply. Thus he has prayed for declaring the termination order as illegal and has also prayed for reinstatement with continuity of service along with Rs. 2000/- as legal expenses.

2. The first party The Zonal Director, Fishery Survey of India, Government of India, M/o Agriculture, Department of A.H. & D., 68, K.G. Road, Shitla Chowk, Porbandar submitted the written statement Ex. 6 on 10.02.2003 partly admitting the averments made in the statement of claim elaborating that he was engaged for the period given as under:

S.No.	Period	Days
1	06.04.1988 to 11.11.1988	179
2	26.06.1989 to 25.01.1990	169
3	20.05.1990k to 25.10.1990	129
4	26.04.1991 to 25.08.1991	100
5	04.02.1992 to 25.06.1992	118
6	01.12.1992 to 30.06.1993	123
7	01.09.1993 to 31.12.1993	100
8	01.05.1994 to 30.09.1994	126
9	01.03.1995 to 30.06.1995	100

And submitting that the first party organisation is a Research and Survey Organisation provided with a survey vessel with regular crew on the board of the vessel governed under the CCS Rules. Under the said rules, the regular crew members can go on leave or avail their leaves as and when they required. Being a statutory requirement in place, the crew members are availed from the local market whenever a short term vacancy arises. On regular employee being on leave, an outside person is engaged from local market as casual labour on daily rates basis in the said leave vacancy. As and when the regular crew member comes and report on duty after leave, the casual labours asked to stop coming, therefore, maintaining their seniority list does not arise. In the present case, admitting that the workman engaged as casual store helper from 06.04.1988 to 30.06.1995, the muster roll and the seniority list was not prepared because the vessels in the series on Meena i.e. 17.5 litre Steel Troulers were ordered decommissioned a long back and their muster roll and other reports are not available. However whatever documents were available are enclosed with the written statement and the reference is liable to be dismissed on the ground that the tribunal has no jurisdiction under Section 2 (d) (ii) (3) of the Industrial Disputes Act, 1947 as the organisation was engaged in Education, Science, Research and Training Institutions which is not covered under Industry. Second, as per recruitment rules, vacancy are to be filled 50% from CIFNET Trainees on tenure basis, 40% on promotion from Group D Staff Net Menders and remaining 10% by transfer. Accordingly, the office at Porbandar was provided training to trainees from CIFNET, Kochi and the Porbandar office was having 5 Net Menders to whom the chance were to be given first to fill up the vacancies as per the recruitment rules. Thus the applicants were not entitled for regularisation or for a claim of continuous employment as being the casual workman. Thus the relief sought by the second party was fit to be dismissed.

3. On the basis of the pleadings, the following issues arise:

I. Whether the action of the management of Zonal Manager, Fishery Survey of India in stopping Shri Kamlesh G. Chotai from work w.e.f. 30.11.1995 is just, fair and legal?

II. To what relief, if any, the workman is entitled?

4. Both these issues are interrelated, therefore, are decided together.

5. **Issue No. I & II:** The burden of proof of these issues was lying on the second party workman who submitted his affidavit Ex. 8 on 15.12.2004 wherein he has reiterated the averments made in the statement of claim and has not said anything contrary in his cross-examination.

6. The second party union/workman was cross-examined on 19.02.2009 wherein he has stated that he was engaged as Casual Store Helper for maintenance of the vessel. He has also admitted that the he was engaged as daily wager on daily rated basis.

7. The first party submitted the affidavit 26 of Shri Maheshkumar Farejiya, the Zonal Manager, Fishery Survey of India who reiterated the averments made in the written statement admitting that this workman worked on daily rated

basis on casual labour on various spells from 1988 to 1995 but he never worked for more than 240 days in any calendar year. The organisation was governed by CCS Rules and was made for research work. This workman was engaged for temporary periods on daily rate wages against leave vacancies of permanent employees.

8. I heard the arguments of the learned counsel of the parties.

9. After considering the evidences of the parties and arguments of their counsel, it is established that the first party organisation was a Research Institution in the field of fisheries breading which does not come with in the definition of the "Industry". Secondly, the organisation was governed by the CCS Rules. Thirdly, the workman has failed to prove that he ever worked for more than 240 days in any calendar year. Fourthly, as per the CCS and Recruitment Rules, the workman who has not undergo the due procedure of recruitment, cannot claim regularisation.

10. However, The Hon'ble Supreme Court in The General Secretary, Coal Washeries Workers Union, Dhanbad V/s Employees in relation to the management of DugdaWashery of M/s BCCL, 2016 LLR 1123, has held that the workman who have worked for a long period must be compensated in lieu of reinstatement applying the principle underlying the decisions of this court in Ruby General Insurance Co. Ltd., V/s P.P. Chopra, (1969) 3 SCC 653 (3 Judges) and the recent case of Delhi International Airport (P) Ltd. V/s Union of India, (2011) 12 SC 449, in our considered opinion, interest of justice would be met by enhancing the amount of compensation in lieu of reinstatement/absorption and regularisation quantified of Rs. 150000/-.

11. Following the aforesaid principle laid down by the apex court, the workman worked for 8 years, the workman was not entitled for reinstatement as reinstatement would amount back door recruitment. Secondly, the vessels on which served has been dismantled and thirdly, the vessels were meant for research work, therefore, it would be appropriate to award Rs. 200000/- (Rupees Two lac) as lump-sum compensation for his long period of service on the vessels as daily wages.

12. All these issues are decided accordingly and the award is also passed in the aforesaid terms. The first party is directed to pay the amount of the award which is Rs. 200000/- (Rupees Two lac) to the workman within 60 days from the publication of the award.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 25 मई, 2018

का.आ. 870.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 33/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.05.2018 को प्राप्त हुआ था।

[सं. एल-39025/01/2017-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 25th May, 2018

S.O. 870.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 33/2016) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 25.05.2018.

[No. L-39025/01/2017-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE SHRI SHUBHENDRA KUMAR , HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOR COURT, KANPUR

ID NO. 33 of 2016

Between-

Shri Kamlesh Chaturvedi,
128/75 f Block, kidwai Nagar
Kanpur-208011.

And

The Management of Punjab National Bank
Through Circle Head, Birhana Road,
Kanpur-208001.

Award under section 33 A of Industrial Dispute Act 1947.

1. Worker Kamlesh Chaturvedi has moved the present application under section 33A read with section 9A and section 33(2) (b) of ID act of 1947 which has been registered as Industrial dispute no. 33 of 2016.

2. Worker in his application / complaint has asserted that for the reasons disclosed in the accompanying affidavit it would be expedient in interest of justice that order dated 28.07.16 passed by circle head of Punjab National Bank, Kanpur, dismissing the service of applicant without notice with immediate effect be examined under the mandatory provisions of section 33A coupled with section 33(2)(b) of ID Act, without entering the merit of case as punishment awarded to applicant is not in accordance with Bipartite Settlement and is against the conditions mentioned in section 33(2)(b) of the act, which provide that no such workman shall be discharge or dismissed unless he has been paid wages for one month and an application should be made by employer to the authority before which proceeding is pending for approval of the action taken by the employer.

3. It is further pleaded by the worker that it would be in the interest of justice that considering the pendency of Industrial Dispute Case No. 29 of 2015 filed by the applicant which is pending before this Hon'ble Court, management of Punjab National Bank was least competent to pass orders of dismissal in relation to the applicant without making payment of one month's salary as also without making any application under section 33(2)(b) of the Act, before this Tribunal to approve their order of dismissal by means of which the applicant was dismissed. As the management has palpably failed to invoke the mandatory provisions of Industrial Disputes Act, 1947, (supra), therefore, the dismissal order passed by the management in relation to the applicant can be fully examined by this Hon'ble Tribunal without touching the merit of the case as has been held by Hon'ble Apex Court (Constitution Bench) vide its order dated 17.01.2002.

4. It is further stated that the applicant while exercising the powers as conferred upon him under the Bye Laws of the union, worker being General Secretary was fairly ventilating the grievances of its members before the management for negotiations and in case, for any reasons, no amicable settlement is arrived at before the table between the applicant and the management, the applicant used to invoke the jurisdiction of provisions of Industrial Dispute Act of 1947, like raising of Industrial Dispute on behalf of members of his union.

5. It is further pleaded by applicant that in course of that process when demand of applicant was not fulfilled by the management, the applicant with the members of union went before the senior officers of the management for settlement of the demand of applicant raised on behalf of the members of the union which was represented by the applicant and for this main reason the applicant was highly disliked by the high ups of the Bank as a result of which the applicant was served with a charge sheet dated 16.06.2016.

6. That it has been pleaded that the applicant was due for his retirement on completion of age of superannuation on 31.07.2016. But higher authority of management has tried and completed the departmental enquiry against the applicant in a hasty manner without the following the rules of Natural Justice and rules governing the service conditions as laid down under the provisions of Bipartite Settlement. The management was so hasty insomuch so to see the applicant to be dismissed from the service of the Bank prior to two days (2 days) of his retirement, this approach of management is quite excessive and shows that they have no regard to an employee of the Bank whose past track record was quite fair and unblemished.

7. Lastly it has been prayed by the worker that the management of Punjab National Bank has neither followed the mandatory provisions of section 33(2)(b) of the Act and section 9A of the Act, therefore, the present application is moved before this Hon'ble Court to reject the dismissal order passed by the management on 28.07.16 without having any specific permission from this Tribunal and without making payment of one month salary as provided therein, therefore, the impugned order dated 28.07.16 passed by the management is liable to set aside and the applicant be treated to have been reinstated in the service of the Bank on same position where he was on the date of dismissal on the premises as if he was never suspended or dismissed from the service of the Bank.

8. Management of Punjab National Bank has filed his reply and by raising preliminary objection stated that the management has raised the objection dated 22.09.17 over maintainability of the so called Industrial Dispute before this Tribunal to decide the issue when the said matter has neither been referred to by the appropriate government nor raised under section 2(k) of ID Act. Management has further raised the objection that the so called complaint under section 33 of the Act in Industrial Dispute case no. 33 of 2016 filed by the worker is

against the provisions of section 33 of the Act. It is further submitted that objection of the management as referred to above are to be considered first and the present dispute be dismissed on the basis of the objections dated 22.09.16 alone.

9. On facts it has been pleaded by the management that under leadeship of Shri Kamlesh Chaturvedi and few other employees of Punjab National Bank staged riotous and disorderedly act at the premises of Punjab National Bank, Circle Office Birhana Raod Kanpur, along with outsiders. No prior permission of the competent authority of the Bank was obtained and no information was given to the management. It is to be specifically mentioned here that the aforesaid PNB staff members deliberately got around hundred outsiders, gathered outside the Banks, Building. After staging the demonstration outside the Bank premises several persons under the leadership of Shri Kamlesh Chaturvedi entered inside the circle office premises situated at first floor of the Building forcibly. They also entered forcibly and violently inside the cabin of the Circle Head. Almost one sided allegation where continued to be made against the Circle Head and the other Bank authorities by Shri Kamlesh Chaturvedi. **To quote some are as-**

S.K Singh hosh mein aao; Aisa lagta hai ki aap insaan hai hi nahi; Aap ne apne aap ko khuda se ooper samaj liya hai; Aap yeh jo kar rahe hai acha nahi kar rahe hai; aap yaha ghas cheelne ke liye baithe hai; Aap ne Branche dukano me kholi hai; and tumhari cheethi patri sab nikalwa rahe hai jo bihar me gaban kare ho.

10. It is further stated by the management that while the above was going on inside the cabin some higher police authority rushed to circle head cabin and try to diffuse the charged atmosphere by pacifying the person who were shouting. On the persuasion of police authority the numbers of union left the cabin and premises. Accordingly Shri Kamlesh Chaturvedi has been placed under suspension vide order dated 18.03.16 which was followed by charge sheet dated 16.04.2016 issued by the disciplinary authority for his forced unauthorized entry inside the cabin of circle head along with outsiders and creating riotous and disorderedly behavior.

11. The charge sheet dated 16.06.2016, issued to the worker is based on eight counts which need not to be detailed here mainly for the reason that the Tribunal has to decide the present industrial dispute / complaint without touching merit of the domestic enquiry.

12. The management has further alleged that in terms of provisions of section 33(2) of the act Shri kamlesh Chaturvedi has been paid wages for one month vide cheque No. 836457 dated 11.08.2016.

13. Management has further pleaded that the Industrial Dispute No. 29 of 2015, before this Tribunal, was filed in respect to the alleged complaint filed by the workman under section 33 A of the Industrial Disputes Act, 1947 in respect to the Industrial Dispute No. K: 7(80)/2009/E.1 pending before Ld. R.L.C (c), Kanpur alleging therein that the management has altered the condition of service by transferring him to another branch during the pendency of conciliation proceedings in respect to the Industrial Dispute No. K: 7(80)/2009/E.1 pending before Ld. R.L.C(c) , Kanpur and that the said ID i.e. 29 of 2015 does not pertains to the Disciplinary Action Case initiated against Shri Kamlesh Chaturvedi vide charge sheet dated 16.06.2016. Management has further submitted that in the present matter proceeding were initiated before RLC(c) where the conciliation proceeding were pending and during the pendency he raised the dispute before the CGIT which is not appropriate forum to hear the dispute per section 33A and ultimately the ministry referred the matter on the point whether the management of Punjab National Bank Kanpur committed any Unfair Labor Practice in transferring Shri Kamlesh Chaturvedi, Special Assistant vide order dated 20.06.2015 from Mall Road Branch, Kanpur to Kidwai Nagar Branch, Kanpur? If so, to what relief, the concerned workman is entitled to?" and since the management head already paid one month salary to Shri Chaturvedi thus none of the provisions of Industrial Dispute Act of 1947 have been violated by the bank in dismissing Shri Kamlesh Chaturvedi from the service of the Bank vide disciplinary authority order dated 28.07.16.

14. In the end it is submitted by the Bank that none of the applicable provisions of the act have been violated in the case of the worker and as such no cause of action arises for raising present dispute which is liable to be rejected.

15. Worker has filed detailed rejoinder supporting the allegations made in complaint / industrial dispute in which the facts already pleaded by the worker have been reiterated and nothing new has been mentioned therein.

16. On the Basis of above pleadings of the parties and under the facts and circumstances of the case, this Tribunal has to determine the following point:-

"Whether the order of dismissal of worker becomes ineffective from the date it was passed on the ground that employer has not taken any approval / permission as required under section 33(2) (b) of the act? If so, its effect".

17. Worker has examined himself as WW1 and on behalf of management Shri Hasan Raja Manager HRD has been examined.

18. Worker has filed copy of Failure of conciliation report dated 16.12.2016 paper No. 8/2-3, copy of application under RTI Act moved by worker, paper No. 8/4-5, copy of reply dated 18.01.2017 received from RLC(c), paper No. 8/6-7, reply dated 23-12-2016 received form RLC(c) in response of application under RTI dated 4.11.2016 through list 8/1. Worker has further filed copy of order dated 2.06.2017 passed by this Tribunal in ID No. 29/15 paper No. 21/2-4 & copy of judgment of Hon'ble High Court Delhi, paper No. 21/5-15, worker has also filed copy complaint under section 33-A registered as I.D. No. 29/15, paper No. 32/2-5, short reply of management in ID No. 29/15, paper No. 32/6-10, copy of order dated 31.05.2016 passed in ID No. 29/15 paper No. 32/11-13, copy of RTI application dated 15.12.2016, paper No. 32/15-17. These papers are filed through list 32/1, but paper No. 3 mentioned in the list has not been filed by the worker.

19. Management has filed various documents through list 28/1 which are copy of letter of RLC(c), copy of complaint dated 23.06.2015 & 23.06.2016 filed by worker before RLC, copy of complaint dated 25.06.2015 filed by worker registered as ID No. 29/15,copy of objection filed by management in ID No. 29/15, copy of FOC, charge sheet, order of Disciplinary authority dated 28.07.2016, copy of cheque No. 836457 dated 11.08.2016 in favor of worker, copy of Civil Misc. stay application filed before Hon'ble High Court Allahabad and copy of order dated 05.07.2017 passed by this Tribunal in ID No. 29/15.

20. I have heard worker and Sri Husain Raja, Manager HR of management at length and perused the evidence on record.

21. Worker Kamlesh Chaturvedi has filed his evidence on affidavit wherein he has supported his case that he was an employee of Punjab National Bank. In his examination in chief he has deposed that deponent was an employee of Punjab National Bank posted was Special Assistant at BO: M Block, Kidwai Nagar Branch of the bank. He was appointed on the post of Clerk-cum-Typist on 20.10.1976 and later on w.e.f. 05.10.1982 special Pay Carrying duties of Special Assistant were entrusted upon him on a permanent basis.

22. That under the provisions of Trade Union Act as well as under the provisions of Industrial Disputes Act, 1947, the deponent is an office bearer of the trade union movement holding various positions in Unions of Bank Employees viz. Dy. General Secretary in Indian National Bank Employees Federation at apex Banking Industry Level, Assistant Secretary in All India PNB Workers Federation at Bank level, General Secretary Punjab National Bank Workers Union, U.P. at U .P. State Level of the bank as also Vice-President of Indian National Trade Union Congress, U.P., the Federal union to which above bank unions are affiliated.

23. That deponent while exercising the powers conferred upon him under the bye laws of the union has been espousing the causes and grievances of employees/members before the management through negotiations and in case for any reasons whatsoever, no amicable solution/settlement is arrived at across the table between deponent and the management, the deponent has used the jurisdiction of provisions of Industrial Disputes Act, 1947 by raising Industrial Disputes on behalf of employees /members of the union.

24. That in the course of that process when demands of the members of the union were not fulfilled by the management, the deponent with prior notice along with members of the union and other Office Bearers of the above unions went before Senior Officers of the management for redressing the demands of the members on 18.03.2016 in his representative capacity.

25. That this course of action of the deponent was highly disliked by the high ups of the bank and as a result he was placed under suspension on 18.03.2016.

26. That it is pertinent to mention that deponent was due for his retirement on attaining the age of superannuation on 31.07.2016 but since it was Sunday on 31.07.2016, the deponent was to retire on 30.07.2016.

27. That by Order dated 28.07.2016; the services of workman were dismissed. It is worth to bring on records that workman was due for retirement on 30.07.2016 on attaining the age of superannuation. A copy of Punishment Order has already been filed which is marked as Paper No. 1/13 to 1/19 in the case file.

28. That at the time of passing of Dismissal Order dated 28.07.2016, an Industrial Dispute No. 29/2015 was pending before the Hon'ble Tribunal and the management of Punjab National Bank was least competent to pass Order of

Dismissal in relation to deponent without complying with the conditions laid down under Section 33(2)(b) of the Industrial Disputes Act, 1947 i.e. without making payment of one month salary as also without making an application under Section 33(2)(b) of the Industrial Disputes Act, 1947 before the Hon'ble Tribunal to approve the Order of Dismissal by means of which the services of the deponent have been dismissed.

29. That Hon'ble tribunal has disposed of the objection of the management with regard to maintainability /pendency of the Industrial Dispute No. 29/2015 at the time when Orders of dismissal dated 28.07.2016 were passed vide Order dated 02.06.2017, a copy of which has already been filed.

30. That in the present case, it is on records that approval application under Section 33(2)(b) was not filed and approval has not been granted. It is worth mentioning here that subsequent to filing of the complaint under Section 33A read with 33(2)(b), the management made payment of one month salary to the workman vide letter dated 18.08.2016 manipulating the date of the Cheque as 11.08.2016, a copy of which has already been filed and available on case file as Paper No. 5/14 and Paper No. 5/15 This clearly proves that management of the Bank was aware that it is mandatory to seek approval of the dismissal from the Hon'ble Authority and it has willfully violated the mandatory provisions.

31. That in Jaipur Zila Sahkari Bhoomi Vikas Bank Ltd. Vs Sri Ram Gopal Sharma & another reported in AIR 2002 Page 643 & Delhi Jal Board vs Industrial Tribunal & Another reported in FIR 2015(147) Page 1066, a copy of which has already been filed and is available on case file as Paper No. 1/5 to 1/12. Hon'ble Delhi High Court has held that if the employer has not filed application under Section 33(2)(b) of the Industrial Disputes Act, 1947 for granting approval and has not complied the conditions laid down in said Section then the Tribunal shall not decide the case on merit and will pass its award only on the ground that since no approval has been granted as such dismissal of the service is invalid, void and illegal and the workman would be entitled for reinstatement with full wages and all consequential benefits as if he was never dismissed. Copy of the Judgment of Hon'ble Delhi High Court has also been filed.

32. That dismissal Order dated 28.07.2016 passed by the opposite party is wholly illegal, unjust and arbitrary and hence liable to be quashed.

33. That workman is entitled for reinstatement with full back wages and all other consequential benefits.

34. That after termination of the services, the deponent has been out of employment and he has not received any job.

35. That on 31.07.2016, the workman has attained the age of superannuation. Since it was Sunday on 31.07.2016, the workman was to retire on 30.07.2016 and that the workman is entitled to receive all the benefits and back wages till the age of his superannuation as if he was never dismissed from the service of the bank.

36. In his cross-examination he has deposed that originally he was appointed in New Bank of India on the post of clerk cum typist on 20.10.76. He worked on the post till 28.07.16, when he was dismissed from the service illegally. He was General Secretary of Punjab National Bank Worker Union which was registered and its registration was cancelled in the year 2005 for not filing the return and thereafter again the union was register on 17.01.17. He does not remember hat how many times he was issued charge sheet during his service period but he was only awarded punishment of dismissal illegally on 28.07.16 and he was not awarded any punishment in any inquiry. He does not remember whether he was on leave on 18.03.16 or nt. Management was given demand notice time to time under the provisions of Industrial Disputes Act and he has not made any request to Dy.CLC© and RLC© for interference in demonstration on 18.03.16. On that day the demonstration made for negotiations with the officers of the bank on demand notice.

37. Industrial Dispute Case No. 28/15 is with regard to change in service condition during the pendency of conciliation. He has filed a complaint regarding it before RLC(c) under section 33-A of I.D Act which ended in failure of conciliating and in this matter a reference was made to this tribunal by Mol & Employment, New Delhi, which is registered as Industrial Dispute No. 16 of 2017.

38. He has filed Industrial Dispute No. 29/15 for his transfer and till then no other industrial dispute of the worker was pending in this tribunal. Sri Husain Raza, authorized representative for the management appeared in I.D. No.29/15 and was making his signatures on the order sheet, therefore, he must have knowledge of pendency of industrial dispute No. 29/15. He has admitted that no matter regarding his charge sheet dated 16.06.16 and dismissal order dated 28.07.16 was pending in this tribunal. He has stated that as matter regarding his transfer was pending before RLC© and during its pendency he was placed under suspension, therefore, he has made a request to RLC© u/s 33 of I.D. Act for status quo and the offices of the management have violated the rules and therefore, he has made complaint to RLC© u/s 33-A of the Act for punishing those offices of the management. He has further deposed that as RLC© has no power to give award/judgment, therefore, he has filed complain

before this tribunal u/s 33-A of Industrial Disputes Act, 1947. It is further stated by the witness that he has received copy of order of disciplinary authority dated 28.07.16 on 29.07.16 at about 10.00 a.m. He has not preferred any appeal against the order of the disciplinary authority against which he has filed a complaint before this tribunal.

39. On a specific question put by the authorized representative for the management as to whether this Industrial Dispute case was registered directly or it was registered on the reference made by the Ministry. Worker has replied that the answer of this question is at page No. 1/1 made by the competent authority.

40. On behalf of management Sri Husain Raza working as Manager, HRD, Punjab National Bank, Kanpur, appeared as M.W.1 and has stated in his examination in chief that on 18.03.16, Sri Kamlesh Chaturvedi, Special Assistant posted at PNB Branch Office: M-Kidwai Nagar, Kanpur, along with other staged an unauthorized demonstration at the premises of Punjab National Bank, Circle Office, Birhana Road, Kanpur, and entered forcibly and violently inside the cabin of Circle Head (DGM) Kanpur and created riotous and disorderly behaviors along with outside unsocial elements. Accordingly due to this riotous behave with seniors in the institution, Sri Kamlesh Chaturvedi, was placed under suspension vide disciplinary authority order dated 18.03.16 and a charge sheet dated 16.06.16 was issued to the worker by the disciplinary authority and with a view to inquire into the truth of alleged acts of misconducts as mentioned in the charge sheet, referred to above, the disciplinary authority vide order dated 28.06.16 instituted a departmental enquiry.

41. The enquiry officer has submitted his report dated 19.07.16. The enquiry officer has proved all the charges except charge No. 7, but the tribunal has not to consider either the fairness of the inquiry or quantum of punishment as admittedly it is a case under section 33-A of Industrial Disputes Act, 1947, in which the tribunal is legally obliged to examine as to whether or not the management has sought approval of the tribunal under section 33(2) (b) of Industrial Disputes Act, 1947, before serving order of dismissal dated 28.07.16 passed by the disciplinary authority especially when Industrial Dispute No. 29 of 15 between the worker and the management was pending before the tribunal.

42. It is further stated by the witness that after due consideration of whole facts, the disciplinary authority confirmed the punishment of dismissal without notice vide order dated 28.07.2016. Worker was due to retire on 31.07.16, therefore, inquiry was conducted before his retirement and final orders were passed on 28.07.2016. In respect of dismissal Sri Chaturvedi directly filed complaint dated 11.08.16 before CGIT Kanpur under section 33-A & section 33(2)(b) of ID Act alleging that management has dismissed him during pendency of Case I.D. No. 29/15 before this Tribunal . The said complaint was registered as I.D No. 33/16 without reference from Ministry of Labor. It is also alleged that Sri Chaturvedi has earlier filed a complaint dated 25-06-15 before this Tribunal u/s 33-A of I.D. Act alleging therein that management has altered the condition of service by transferring him to another branch during the pendency of conciliation proceeding pending before RLC(c) and it was registered as I.D No. 29/15. Worker has also made a similar complaint dated 23.06.15 regarding his transfer under section 33-A of the Act before RLC(c), Kanpur. As complaint was pending before RLC(c) Kanpur, this Tribunal is not empowered to adjudicate and to register I.D. No. 29/15 on the complaint of worker regarding his transfer under section 33-A of the Act. As no proceedings were pending before this Tribunal pertaining to transfer of worker and I.D. No. 29/15 has been registered before this Tribunal against the provisions of I.D Act and none of the provisions of I.D. Act has been violated by the management while dismissing the worker from the service of the Bank. As ID No. 29/15 pending before this Tribunal does not pertains to the Disciplinary action case initiated against worker vide charge sheet dated 16.06.16 that complaint dated 11.08.16 filed by worker under section 33-A of I.D Act is not maintainable. The Hon'ble High Court has held that Tribunal is competent to decide only dispute which comes under the definition of sec 2(k) and 2-A of ID Act, all other kind of dispute were outside of realms of the Act and Tribunal would get jurisdiction to decide the dispute only when it is properly espoused under the Act.

43. In his cross-examination MW1 Husain Raza on the question raised by worker as to whether at the time of the passing dismissal order on 28.07.16 I.D. No. 29/15 was pending. On this witness has replied that no Industrial dispute referred by Ministry was pending and I.D. No. 29/15 is simply a complaint against which objection has been filed by the management. He has admitted that worker Kamlesh Chaturvedi was paid one month's salary under section 33 of I.D Act on 11.08.16 after his dismissal. He does not know when the cheque was given to worker. He further said that he does know the fact as to in which I.D. case the salary of one month was paid to worker. He further said that as no I.D was pending before the Tribunal hence there was no need of taking permission from this Tribunal. He has denied that permission was necessary because at the time of I.D. No. 29/15 was pending in this Tribunal. On a question asked by the worker whether without reference from Central Government I.D can be raised before this Tribunal. On this the witness stated that being a bank employee he does not know the legal position. Therefore he cannot explain the provisions of I.D Act. He stated that he does not

know about the information given by the RLC(c) on R.T.I. He has further stated that he does not know whether any charge sheet was issued to the worker or his service career remained un blotted or not. He has stated that every party has got right to make complaint before this Tribunal under section 33-A of the Act.

44. On the facts and evidence adduced by the parties following points are admitted to both the parties:-

i) That Industrial Dispute No. 29/15, Sri Kamlesh Chaturvedi versus Punjab National Bank was pending before this tribunal while passing the order of dismissal dated 28.07.16, by the disciplinary authority which is filed by the worker and is paper No.32/2-5, but the only dispute raised by the management is that this industrial dispute was registered on the complaint filed by the worker under section 33-A of the Act and is not referred by the Ministry of Labor & Employment, New Delhi, under the provisions of the Act.

ii) That it is also admitted to both the parties that after the dismissal of worker one month's wages / salary was not paid to the worker as is required under section 33(2)(b) of Industrial Disputes Act, 1947, and is admittedly paid to the worker on 18.08.16 through cheque.

45. Before further discussion it is necessary to go through the provisions of section 33(2) (b) and section 33-A of the Act which are as under:-

Section 33 of the I.D Act 1947 :-

Conditions of service etc., to remain unchanged under certain circumstances during pendency of proceedings- (1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before (an arbitrator) or a labor court or tribunal or National Tribunal in respect of an industrial dispute no employer shall –

(a) In regard to any matter connected with the dispute, alter to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding: or

(b) For any misconduct connected with the dispute, discharge or punish whether by dismissal or otherwise any workman concerned in such dispute,

Save with express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with standing orders applicable to a workman concerned in such dispute (or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman)-

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) For any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

As provided in the provision mentioned above, following conditions are necessary to be complied with-

i) No workman shall be dismissed unless he has been paid wages for one month.

ii) An application made by employer to the authority before which proceeding is pending for the approval of the action taken by employer.

Thus it is very much clear that if any of the above condition is not followed by employer the dismissal or discharge of the worker shall be in violation of the above provisions.

46. **Section 33-A. Special provision for adjudication as to whether conditions of service, etc, changed during pendency of proceeding-** Where an employer contravenes the provisions of section 3 during the pendency of proceedings (before a conciliation officer, Board, an arbitrator, Labor Court, Tribunal or National Tribunal) any employee aggrieved by such contravention, may make a complaint in writing (in the prescribed manner-

(a) To such conciliation officer or Board, and the conciliation officer or Board shall take such complaint into account in mediating in, and promoting the settlement of such industrial dispute and

(b) To such arbitrator, Labor Court, Tribunal or National Tribunal and on receipt of such complaint, the arbitrator, labor court, Tribunal or National Tribunal, as the case may be, shall adjudicate upon the complaint as if I were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit his or its award to the appropriate Government and the provisions of this Act shall apply accordingly.

47. Learned AR of the management has contended that the word "Such" mentioned in the sub section (a) &(b) of section 33-A of the Act, indicates that worker has right to file complaint before the authority where proceeding are pending and has relied upon internet copy of judgment of Culcatta High Court reported in (1958) II LLJ 67 in the case of Birendra Kumar Chatterjee vs Reliance Jute mill company, where in the Hon'ble High Court has held that as the proceedings were pending before 7th Industrial Tribunal, therefore, the 2nd Industrial Tribunal had no jurisdiction to entertain the application filed by the petitioner.

48. The above citation does not apply in the present case as earlier proceeding is alleged to have been pending before this Tribunal.

49. In reply worker has cited case law of Bombay High Court reported in 1975(30) FLR page 225 between Prabhakar Shyam Rao Marathe vs Maharastra state electricity. The Hon'ble High Court in para 15 of its judgment has observed as under –

Para 15:-

The express words of S. 33-A do not appear to help Mr. Ramaswamy. The only condition precedent prescribed by the section is that the employer must have contravened the provisions of S. 33-A during the pendency of the proceedings before the Labor Court, Tribunal or National Tribunal. A cursory reading of the opening part of the section might suggest that the words "during the pendency of proceedings before a Labor Court, Tribunal or National Tribunal" are redundant; but if Ss/ 33-A and 33-A are carefully read together, the necessity for this provision will be immediately perceived. Contravention of S. 33A might take place also during the pendency of conciliation proceedings before a conciliation officer or a Board. If the employer has contravened the provisions of S. 33A during the pendency of conciliation proceedings, then the remedy under S. 33A is available to the employee.

50. As the earlier proceedings were pending between the same parties before this tribunal, therefore, the law cited above applies with full swing to the facts and circumstances of the present case and this tribunal has jurisdiction to entertain the complaint of worker and register it as Industrial Dispute case under section 33-A of the Act.

51. Management has also cited following case law –

i) 1961 AIR HC page 807 between Lord Krishna textile mills v/s its workmen

ii) Internet copy of Hon'ble Delhi High Court in WP(c) 4468/2014 dated 17.04.15 between Lord Krishna Textile mills /national textile corporation ltd. Vs Rampal singh and others connected writs.

iii) 1974 II LLJ Rajasthan High Court page 328 between Rajasthan State Road transport corporation Vs Judge Industrial Tribunal

52. Contrary to it worker has cited internet copy of judgment of Hon'ble Apex Court passed in appeal (civil) no. 87-88 of 1986 between Jaipur Jila sah. Bhomi vikas Bank ltd. Vs Sri Ramgopal verma and anothers delivered on 17.1.2002 in which Hon'ble Apex court referring to the case P.H. kalyani vs M/s Airfrance Culcutta 1964 (2) scr page 1041 in which Hon'ble apex court has observed that this court has held in that case the provision of section 33(2)(b) contemplates three things mentioned therein, namely (i) Dismissal or discharge ii) payment of wages and three making of application for approval to be made simultaneously and to be part of same transaction so that employer when he takes the action under section 33(2) by dismissing or discharging and employing should immediately pay him or offer to pay him wages of one month and also make an application to the tribunal for approval at the same time.

53. The principles laid down by Hon'ble apex court are followed by Hon'ble High Court already in WP(c) 21069/05 and CM16829/2014, Delhi jal board vs Industrial Tribunal no. 2 and others decided on 21.08.15 of which internet copy is filed by worker wherein Hon'ble High Court Delhi has observed –

It is not in dispute that an industrial dispute between the workman and Delhi Jal Board was pending before the Industrial Tribunal. During pendency of industrial dispute, the petitioner management terminated the service of the respondent- workman vide order dated 12.01.1993. It is an admitted position that the provisions of Section 33(2) (b) of the ID Act had not been complied with by the employer and the employer had not made any application to the Industrial Tribunal before which the industrial dispute was pending for approval of the action of termination taken by the employer. Therefore, the respondent- workman filed a complaint under Section 33A of the Industrial Disputes Act, 1947 before the Industrial Tribunal, Karkardooma Court, Delhi, where the dispute was pending. The Tribunal came to the conclusion that the termination was in contravention of provision of Section 33(2) (b) of the ID Act and, therefore, directed reinstatement of the respondent – workman with back-wages. This finding does not suffer from any infirmity. In JaipurZilla Sahakari Bhoomi Vikas Bank (supra), one of the questions for consideration before the Constitution Bench of Supreme Court was whether failure to make an application under Section 33 (2) (b) would not render the order of dismissal inoperative? The Supreme Court has answered this question by holding that the failure to make an application under Section 33 (2) (b) of the said Act and that, by itself, would render the order of dismissal to be inoperative. In other words, if the mandatory conditions of Section 33 (2) (b) of the said Act contravened, while passing the order of the dismissal, the same would have no effect in law.

and it was further observed as under-

It is; therefore, abundantly clear that the employee may file a complaint with regard to the relief that is required to be given to the employee in respect of the contravention of the provisions of Section 33. In other words, where no application seeking an approval under Section 33 (2) (b) of the said Act is made by the employer, the employee may yet make a complaint under Section 33A seeking relief of reinstatement and payment of back wages. It is that dispute which will be taken up by the Industrial Tribunal which will obviously go into the question as to whether there has been or there has not been compliance with the mandatory provisions of Section 33 (2) (b) of the said Act. Once the Tribunal comes to the conclusion that the mandatory provisions have been contravened, the only thing that needs to be done by the Tribunal is to direct that the employee be given an appropriate relief by way of reinstatement and by making an order with regard to back wages. The Tribunal is not required to go into the question of as to whether the dismissal was good or bad, on merits,

and the Hon'ble High Court has found non compliance of the three condition mentioned in section 33 (2) (b) and observing it the writ was dismissed and judgment of Industrial Tribunal was upheld and directed Delhi Jal Board to comply with the award dated 21.7.2004 passed by industrial tribunal by paying full wages to the workman within eight weeks from the pronouncement of this judgment.

54. On these points appreciating the evidence of parties it is found that worker Kamlesh Chaturvedi has stated that at the time of passing dismissal order dated 28.07.16 and Id no. 29/15 was pending before this Tribunal and dismissal order was passed without compliance of conditions mentioned in section 33(2)(b) of the Act that is without making payment of one month salary and without making any application for seeking approval of dismissal order. He has also stated that the management made payment of one month salary vide letter dated 18.08.16 manipulating the date of check as 11.08.16, copy of which has already been filed.

55. A perusal of evidence of management witness MW1 Hussain Raza shows that he has stated in his cross examination that on 28.08.16 ID case was pending before this Tribunal. He also admitted that worker Kamlesh Chaturvedi was paid one month salary under section 33 of the Act on 11.08.16. Thereafter he has stated that no ID case from reference from the ministry was pending before this Tribunal at the time of dismissal of worker and he has denied that ID no. 29/15 was pending. There was no necessity of taking approval before passing of dismissal order.

56. Therefore, from the discussion of the evidence of parties it is proved that on the date of dismissal of worker on 28.08.16, ID case no. 29/15 was pending before this Tribunal and secondly it is also proved that at the time of dismissal of worker he was not paid one month salary which was mandatory as is provided in the proviso of section 33(2)(b) and it was admittedly paid to the worker after several days of serving the dismissal order upon the worker.

57. Thus it is proved that the management has not complied with the mandatory conditions mentioned in proviso of section 33(2)(b) of the act.

58. Therefore without going to the merit of domestic enquiry it is held that dismissal order 28.7.16 being in contraventions mentioned in section 33 (2) (b) of the Act is not sustainable in the eye of law as a result of which worker is held entitled to be reinstated with full back wages and all consequential benefits in the service of

management w.e.f 28.7.16, as if the worker was never dismissed from the service of the management. He shall also be held entitled to be in the employment of the Bank till the age of superannuation.

59. Application of worker is answered accordingly in his favor and against the management and award is made as above.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 28 मई, 2018

का.आ. 871.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स वेस्टर्न कोलफील्ड लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 07/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.05.2018 को प्राप्त हुआ था।

[सं. एल-22012/2/2013-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 28th May, 2018

S.O. 871.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 07/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of M/s. Western Coalfield Ltd., and their workmen, received by the Central Government on 17.05.2018.

[No. L-22012/2/2013-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE SHRI S. S. GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/07/2013

Date: 27.04.2018

Party No.1 : The Chairman-cum-Managing Director,
Western Coalfields Limited,
HQ-Coal Estate, Civil Lines,
Nagpur – 440001.

Versus

Party No.2 : Shri Mohd. Tajjuddin, General Secretary,
Lal Zanda Coal Mines Mazdoor Union (CITU),
C/o WCL, Coal Estate, Civil Lines,
Nagpur – 440001.

AWARD

(Dated: 27th April, 2018)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Shrawan Ukundrao Marbate through The General Secretary, Lal Zanda Coal mines Mazdoor Union (CITU) for adjudication, as per letter **No.L-22012/2/2013-IR (CM-II) dated 02.04.2013,** with the following schedule:-

"Whether the action of the management of Western Coalfields Ltd., H.Q. Nagpur through Chairman-cum-Managing Director not to reinstate Shri Shrawan Ukundrao Marbate in service is legal and justified? If not, then what relief the workman is entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Shrawan U. Marbate, ('the workman" in short), through its Union, Lal

Zanda Coal Mines Mazdoor Union (CITU) ('the union" in short) filed the statement of claim and the management of WCL ("Party No. 1" in short) filed their written statement.

3. Workman in his statement of claim asserted that Shri Shrawan Ukundrao Marbate was appointed as a loader in Patansaongi mines in 1990 and then he was transferred to Pipla mines. He possessed a clean and unblemished service record till he reported sick first. According to workman, he became seriously ill and was hospitalized for a very long period and he was duly informed to his superior officers. A charge sheet came to issue to the workman on 25 September 2005 alleging that he is in habit of absenting from duty in the period of January 2005 to August 2005.

4. According to the workman, department enquiry was initiated and report was submitted, then he was dismissed from service by an order dated 22 August 2006 based on ex- party proceeding.

5. According to the workman, management had issued a scheme of "Nai Roshni" for consideration of terminated employee. This scheme was made applicable for the cases of terminated employees, during the period of 1st January 2000 to 31st March 2008. He applied to the management for his reinstatement in service. Medical examination was held and declared the workman unfit due to less height and hypertension, but this procedure was totally improper, unfair and illegal. According to the workman, the management went against the mandatory provision of Section 47 of person with Disability (equal opportunity, protection of rights and full participation) Act 1995, so he prays that he must be re-employed with full back wages with consequential relief.

6. Management filed written statement with denial of the statement of claim and asserted that it is an individual dispute, not the dispute of union. It is also asserted that, "Nai Roshni" scheme had some condition and workman was not medically fit, so he is not entitled to restate. It is also asserted that Tribunal has no power to permit a person to be joined as a party in the present proceeding. According to the management, Hon'ble Court was of the views that, such type of cases are very rare in nature.

7. According to the management, this dispute does not fall within the ambit of section 2A of Industrial Dispute Act, 1947. They also raise an objection that, workman in his individual capacity, who is not a party to the proceeding, cannot be accepted in the eyes of law and same is liable to be rejected summarily, but management had admitted that workman was appointed as a loader and dismissed from the services on 22 August 2006.

8. According to management, "Nai Roshni" scheme for ex-employees, who have been dismissed from services under clause 26:30 after Certified Standing, age of the employee should be less than 45 years and should be medically fit. There are other conditions also, which are required for fresh employment but worker was medically unfit and he was dismissed from the service under clause 26:24 of the Certified Standing Order. According to the management, workman would not entitle for back wages with consequential relief.

9. On behalf of the workman, General Secretary of the union, Mohd. Tajuddin was examined, which was cross-examined by the management, but no witness was examined on behalf of the management. Now, we want to discuss the evidence with reference to the argument of the workman.

10. Mohd. Tajuddin asserted in his evidence that, this industrial dispute was raised on behalf of the union, Lal Zanda Coal Mines Mazdoor Union, but in cross-examination, he admitted that, he has not filed any authority letter or any document on behalf of the union, which show that, workman, Shrawan U. Marbate was member of the union. He also admitted that, union has not filed any bylaw to show that, there is any provision in the bylaw to raise a dispute on behalf of the person, who is not in employment of WCL. On this basis, management argued that, this reference is not tenable u/s 2-A of the I.D. Act.

11. It is also argued on behalf of the workman that, he could not attend his duty regularly due to sickness and result was that, he was dismissed from service after holding enquiry. In evidence of Shri Tajuddin, it was admitted that, neither the workman nor the union had challenged the order of dismissal passed against the workman in any form. So, it shows that, workman did not challenge the order of dismissal.

12. On behalf of the workman in "Nai Roshani" scheme, he was entitled to reinstate in service because provisions of Standing Order 26.24 and 26.30 are identical. This fact was denied by the management. In the court statement Mr. Mohd. Tajuddin admitted that workman was dismissed under clause 26.24 and "Nai Roshani" scheme is applicable to termination under clause 26.30 of Certified Standing Orders. He also admitted that a condition was also imposed in this scheme subject to the medical fitness by the doctor of the company. He also admitted that after medical examination workman found medically unfit which was not challenged by the union of the workman. In this case workman was also not examined. In my opinion provisions of "Nai Roshani" scheme was not applicable to the workman.

13. On behalf of the management it was argued that without setting aside dismissal order reference was bad in law. It is also argued that workman having applied for re-employment should be medically fit. It also argued that workman had filed statement of claim by ignoring the condition mentioning the scheme of "Nai Roshani". So according to the management workman did not entitle for any relief. This fact is denied by the workman in his written argument. Now we see the evidence on this point.

14. Shri Mohd. Tajuddin in para no. 12 of his affidavit of cross-examination admitted that in his affidavit he did not mention his designation. He also admitted that workman was dismissed from the service after conduction of departmental enquiry. He also admitted that workman was not medically fit. I also observed that this matter was not raised by union after passing a resolution. It show that the dispute come in purview of section 2-A of I.D.Act. In my opinion workman is not entitled to any relief. That is he is not entitled to reinstate in service with full back wages and consequential benefit. Hence it is ordered that:-

ORDER

The action of the management of Western Coalfields Ltd., H.Q. Nagpur through Chairman-cum-Managing Director not to reinstate Shri Shrawan Ukundrao Marbate in service is legal and justified. The workman is not entitled to any relief.

S. S. GARG, Presiding Officer

नई दिल्ली, 28 मई, 2018

का.आ. 872.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स वेस्टर्न कोलफील्ड लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 07/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.05.2018 को प्राप्त हुआ था।

[सं. एल-22012/112/2016-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 28th May, 2018

S.O. 872.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 07/2017) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of M/s. Western Coalfield Ltd., and their workmen, received by the Central Government on 17.05.2018.

[No. L-22012/112/2016-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/07/2017-18

Date: 17.04.2018

Party No.1 : The Sub Area Manager,
Neeljay O/c Mines, Western Coalfields Ltd.,
Post: Belora, Tehsil: Wani, Distt. Yavatmal,
Yavatmal (M.S.).

Versus

Party No.2 : Shri S.W. Waghmare, Area Secretary,
All India SC/ST/OBC Employees Coordination
Council, Wani Area, Qrt. No. B-51, Ramnagar
Colony Ghugus, Post: Ghugus,
Distt. Chandrapur (M.S.).

AWARD

(Dated: 17th April, 2018)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Western Coalfields Limited and their union, All India SC/ST/OBC Employees Coordination Council, for adjudication, as per letter **No.L-22012/112/2016- (IR(CM-II) dated 11.05.2017,** with the following schedule:-

"Whether the demand raised by Area Secretary of All India SC/ST/OBC Employee Co-ordination Council Wani Area, Tah. Ghugus, Distt. Chandrapur over the issue of anomaly in pay fixation or pay disparity i.r.o Shri P.W. Wargantiwar, Sr. Mechanic (M), Neeljay O/c Mines, Post Belora, Tah: Wani, Dist. Yavatmal is just, fair and legal? If yes, to what relief the concerned workman is entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement, by registered post with acknowledge due. On 26.02.2018, advocate for the management filed vakalatnama but petitioner did not appear even service of notice. On 12.04.2018, petitioner was also absent. Neither he filed any statement of claim nor any pray for adjournment. It shows that, the petitioner as well as his union is not interested to continue the reference. Hence, it is ordered .

ORDER

The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

SHYAM SUNDER GARG, Presiding Officer

नई दिल्ली, 28 मई, 2018

का.आ. 873.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स कर्नाटका एमता कोल माइंस लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 11/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.05.2018 को प्राप्त हुआ था।

[सं. एल-22012/38/2014-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 28th May, 2018

S.O. 873.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 11/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of M/s. Karnataka Emta Coal Mines Ltd., and their workmen, received by the Central Government on 17.05.2018.

[No. L-22012/38/2014-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/11/2014-15

Date: 20.04.2018

Party No. 1 : The Chief General Manager,
Karnataka Emta Coal Mines Limited,
Integrated Baranj Open Cast Mine,
Kiloni, Teh. Bhadrawati,
Distt. Chandrapur (M.S.).

Versus

Party No.2 : The President,
Rashtriya Koyla Kamraj Sangharsh Sangh,
Plot No. 49, Flat No. C-2, Nandoday
Apartment, Hill Road, Gokulpeth, Nagpur.

AWARD

(Dated: 20th April, 2018)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Karnataka Emta Coal Mines Limited and their union, Rashtriya Koyla Kamraj Sangharsh Sangh, for adjudication, as per letter **No.L-22012/38/2014- (IR (CM-II) dated 30.05.2014,** with the following schedule:-

"Whether the action of the management of Karnataka Emta Coal Mines Limited for discontinuance of food allowance, deduction of disproportionate HRA, not providing reimbursement of LPG charges on marked rate, not giving promotion on seniority basis is just fair & legal? If not, to what relief the workmen are entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement, by registered post with acknowledge due. On 20.11.2014 and 10.03.2015, representative for the management filed authorization. On behalf of the petitioner, nobody appeared even sending of several notices. On 20.04.2018, petitioner was also absent. Neither he filed any statement of claim nor any pray for adjournment. It shows that, the petitioner as well as his union is not interested to continue the reference. Hence, it is ordered:

ORDER

The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

SHYAM SUNDER GARG, Presiding Officer

नई दिल्ली, 28 मई, 2018

का.आ. 874.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स वेस्टर्न कोलफील्ड लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 18/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.05.2018 को प्राप्त हुआ था।

[सं. एल-22012/36/2017-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 28th May, 2018

S.O. 874.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 18/2017) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of M/s. Western Coalfield Ltd., and their workmen, received by the Central Government on 17.05.2018.

[No. L-22012/36/2017-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/18/2017-18

Dated: 19.04.2018

Party No.1 : The Sub Area Manager,
Padmapur Open Cast Mines,
Western Coalfields Limited,
Post: Padmapur, Distt. Chandrapur (M.S.)

Versus

Party No.2 : The Jt. General Secretary,
Rashtriya Colliery Mazdoor Congress,
C/o Shri C.R. Tembhra House,
Vaidha Nagar, Near Ayyappa Mandir,
Tukum Ward No. 2, Distt. Chandrapur (M.S.)

AWARD

(Dated: 19th April, 2018)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Western Coalfields Limited and their union, Rashtriya Colliery Mazdoor Congress, for adjudication, as per letter **No.L-22012/36/2017- (IR (CM-II) dated 28.08.2017,** with the following schedule:-

"Whether the demand of Union raised vide their representation No. RCMC/2012 dated 18.04.2012 (Annexure enclosed) is just, fair or legal? If yes, to what relief the concerned workman is entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement, by registered post with acknowledge due. On 16.11.2017, advocate for the management orally marked his appearance but no vakalatnama was filed. On behalf of the petitioner, nobody appeared even service of notice. On 19.04.2018, petitioner was also absent. Neither he filed any statement of claim nor any pray for adjournment. It shows that, the petitioner as well as his union is not interested to continue the reference. Hence, it is ordered:

ORDER

The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

SHYAM SUNDER GARG, Presiding Officer

नई दिल्ली, 28 मई, 2018

का.आ. 875.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स कर्नाटका एमता कोल माइंस लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 51/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.05.2018 को प्राप्त हुआ था।

[सं. एल-22012/67/2014-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 28th May, 2018

S.O. 875.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 51/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of M/s. Karnataka Emta Coal Mines Ltd., and their workmen, received by the Central Government on 17.05.2018.

[No. L-22012/67/2014-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/51/2014-15

Date: 20.04.2018

Party No.1 (a) : The General Manager,
Karnataka Emta Coal Mines Limited,
Integrated Baranj Open Cast Mine,

Plot No. 84, Kiloni, Teh. Bhadrawati,
Distt. Chandrapur (M.S.).

Party No.1 (b) : The President,
Captive Koyla Mazdoor Sangh (INTUC),
604, Giripeth, Nagpur.

Versus

Party No. 2 : The President,
Koyla Kamgar Sangharsh Sangh Branch
Open Cast Mine of Karnataka Emta Coal
Mines Ltd., Tq. Bhadrawati,
Distt. Chandrapur (M.S.).

AWARD

(Dated: 20th April, 2018)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Karnataka Emta Coal Mines Limited and their union, Koyla Kamgar Sangharsh Sangh, for adjudication, as per letter **No.L-22012/67/2014- (IR (CM-II) dated 25.11.2014,** with the following schedule:-

"Whether the demand of Unions namely Captive Mazdoor Koyla Sangh (INTUC) and Rashtriya Koyla Kamgar Sangharsh Sangh for not providing free food, snacks and tea in the canteen, cancellation of the transfer of 25 workmen who were transferred from Kilonio Mines to Pachhwada, Jharkhand during the period from 8th August, 2014 to 1st September, 2014 and transfer back of nine dumper operators (out siders) from Kiloni Mines and the workmen who have completed their training should be given permanent posting in Grade-E against the management of M/s Karnataka Emta Coal Mines limited Integrated Baranj Open Cast Mines, Plot No. 84, Kiloni, Tq. Bhadrawati, Distt. Chandrapur (MS) is legal, just and proper? If so, what relief the workmen concerned are entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement, by registered post with acknowledge due. On 12.03.2015, representative for the management filed authorization. On behalf of the petitioner, nobody appeared even sending of several notices. On 20.04.2018, petitioner was also absent. Neither he filed any statement of claim nor any pray for adjournment. It shows that, the petitioner as well as his union is not interested to continue the reference. Hence, it is ordered:

ORDER

The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

SHYAM SUNDER GARG, Presiding Officer

नई दिल्ली, 28 मई, 2018

का.आ. 876.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स वेस्टर्न कोलफील्ड लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 69/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.05.2018 को प्राप्त हुआ था।

[सं. एल-22012/103/2014-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 28th May, 2018

S.O. 876.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 69/2014) of the Central Government Industrial Tribunal-cum-

Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of M/s. Western Coalfield Ltd., and their workmen, received by the Central Government on 17.05.2018.

[No. L-22012/103/2014-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/69/2014-15

Date: 19.04.2018

Party No.1 : The Director (Personnel),
Western Coalfields Limited,
Coal Estate, Civil Lines,
Nagpur – 440001.

Versus

Party No.2 : The Regional Secretary,
Rashtriya Colliery Mazdoor Sangh (INTUC),
Regional Office B/51, Koyla Vihar,
Coal Estate, Civil Lines,
Nagpur – 440001.

AWARD

(Dated: 19th April, 2018)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Western Coalfields Limited and their union, Rashtriya Colliery Mazdoor Sangh (INTUC), for adjudication, as per letter **No.L-22012/103/2014- (IR(CM-II) dated 19.02.2015,** with the following schedule:-

"Whether the action of the management of Western Coalfields Ltd., H.Q. Nagpur in denying to give promotion to Sh. S.H. Mahure, Driver, Cat. V, SLU T & SC, is just, fair & legal? If not, to what relief the concerned workman is entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement, by registered post with acknowledge due. On 10.07.2015, advocate for the management filed vakalatnama but petitioner did not appear even service of notice. On 19.04.2018, petitioner was also absent. Neither he filed any statement of claim nor any pray for adjournment. It shows that, the petitioner as well as his union is not interested to continue the reference. Hence, it is ordered:

ORDER

The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

SHYAM SUNDER GARG, Presiding Officer

नई दिल्ली, 28 मई, 2018

का.आ. 877.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मैसर्स गोवा शिपयार्ड लिमिटेड, गोवा एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, गोवा के पंचाट (संदर्भ संख्या आईटी/39/09) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.05.2018 को प्राप्त हुआ था।

[सं. एल-14011/29/2009-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 28th May, 2018

S.O. 877.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. IT/39/09) of the Central Government Industrial Tribunal-cum-Labour Court, Goa as shown in the Annexure, in the industrial dispute between the employers in relation to the M/s. Goa Shipyard Ltd. and their workmen, which was received by the Central Government on 22.05.2018.

[No. L-14011/29/2009-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

IN THE INDUSTRIAL TRIBUNAL AND LABOUR COURT

GOVERNMENT OF GOA AT PANAJI

(BEFORE MR. VINCENT D'SILVA, HON'BLE PRESIDING OFFICER)

Ref. No. IT/39/09

Shri Roque Antao,
Rep. by the President,
Goa Shipyard Workers Union,
Velho Building, 2nd Floor,
Panaji – Goa …Workman/Party I

V/s

M/s. Goa Shipyard Ltd.,
Vasco–da–Gama,
Goa - 403 802 …Employer/Party II

Workman/Party I represented by Ld. Adv. Shri. Suhaas Naik.

Employer/Party II represented by Ld. Adv. Shri. P. J. Kamat.

AWARD

(Delivered on this the 14th day of the month of May of the year 2018)

In exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), (for short 'The Act') the Government of India/Bharat Sarkar, Ministry of Labour/Shram Mantralaya, New Delhi by Order dated 04.11.2009 bearing No. L-14011/29/2009-IR(DU), has referred the following dispute for adjudication.

> *"Whether the action of the management of Goa Shipyard Ltd. in imposing a penalty of demotion to Lower Grade (Unskilled Gr.II) w.e.f. 25.07.2008 on their workman Shri Roque Antao is legal and justified? If not, what relief the workman is entitled to?"*

2. Upon receipt of the reference, IT/39/09 was registered and registered A/D notices were issued to both the parties. Upon appearance, Party I filed a Claim statement at Exhibit 5 and Party II filed a Written statement at Exhibit 6. The Party I thereafter filed a Rejoinder at Exhibit 7.

3. In short, the case of Party I in the Claim statement is that the management of Goa Shipyard illegally demoted him from unskilled Gr. I to unskilled Gr. II w.e.f. 25.7.2008. The enquiry was initiated against him after inordinate delay and laches due to which great injustice and prejudice has been caused to him. The Enquiry Officer has conducted an enquiry in gross violation of principles of natural justice. The Enquiry Officer has not applied his mind before giving the findings and has failed to assess the evidence brought on record and has not considered the evidence of the witnesses including Shri Mohan B. Naik. The Enquiry Officer did not consider the objections raised by the workman in the enquiry and has acted totally in a biased manner. The findings given by the Enquiry Officer are perverse and liable to be set aside. No charges have been proved and therefore, the action of the management in demoting the workman to a lower grade (Unskilled Gr. II) is illegal, unjust and bad in law.

4. In the written statement, the Party II has denied the case set up by Party I and has claimed that dispute is not an industrial dispute. The Goa Shipyard Workers Union had not given any written authority to the President and/or

General Secretary of the Union to espouse the cause of the Party I. The record of Party I was not good and he was given ample opportunity to improve his conduct in the past. The Party I entered in the office of Mr. M. A. Kawadkar, Sr. Engineer, Paint Shop and abused him and when Mr. Kawadkar told Mr. Antao to call the peon, he lifted a paper weight from the table and raised his hand till the forehead with intent to hit him. The workman also abused and threatened to kill him. He was involved in a grievous nature of misconduct warranting major punishment. A show cause notice was issued to him. The Party I filed his reply but explanation was not found satisfactory and Party II decided to proceed with the punishment. The action of demotion to lower grade is legal, just and bonafide.

5. In the rejoinder, Party I has denied the case set up by Party II in its defence.

6. Based on the above averments of the respective parties, the following issues were framed.

1) Whether the Party I proves that the enquiry held is not fair, proper and just?

2) Whether the charges leveled against the Party I are proved to the satisfaction of the Tribunal?

3) Whether the action of the Party II in imposing penalty of demotion to lower grade (unskilled Gr. II) w.e.f. 25.7.08 is legal and justified?

4) Whether the Party II proves that the dispute referred is not an Industrial Dispute as defined under section 2(k) of the Industrial Disputes Act, 1947?

5) What relief? What order?

7. It is a matter of record that preliminary issues No. 1 and 2 were answered vide Award(Part I) dated 10.02.2017 at Exh. 32 and held that domestic enquiry initiated against the workman, Shri Roque Antao is fair, proper and just. It is further held that the charges of misconduct leveled against Party I by Employer/Party II are proved to the satisfaction of the Tribunal.

8. None of the parties led evidence in support of issues No. 3, 4 and 5.

9. Heard arguments. Notes of Written arguments came to be placed on record by Party II.

10. I have gone through the records of the case and have duly considered the arguments advanced. My findings on above issues as under:

Issue No. 3	…	…	In the Negative.
Issue No. 4	…	…	In the Negative.
Issue No. 5	…	…	As per final order.

R E A S O N S

ISSUE NO. 3 & 5:

11. Needless to mention, the Preliminary issues No. 1 and 2 have been answered vide Award (Part I) dated 10.2.2017 holding that the enquiry conducted against Party I is fair, proper and just and the charges of misconduct leveled against Party I by the Employer/ Party II are proved to the satisfaction of the Tribunal. It has been alleged and proved that the Party I entered in the office of Shri M. A. Kawadkar, Sr. Engineer, Paint shop at around 15.50 hrs. on 21.3.2007 and abused him with words like bastard, sala, etc. who was the Controlling Officer and QIC of Paint shop and that he also lifted the paper weight from the table and raised his hand till the forehead of Mr. Kawadkar with an intention to hit him and also abused and threatened him by saying that he will kill him. There is no dispute that it has been already held while answering the above two issues that the charges leveled against him are proved to the satisfaction of the Tribunal. The only question therefore is whether the penalty of demotion to lower grade i.e. unskilled Gr. II is legal and justified.

12. Learned Advocate Shri Suhaas Naik has submitted that the past records of the Party I is clean and unblemished and the impugned order of demotion makes no reference to his past records which is a mitigating factor, which would result in reducing the seriousness and the gravity of the misconduct proved against him and in support thereof, he relied upon the case of the **Indian Seamless Metal Tubes Limited (Tubes Works) v/s Shri Kailash Nampelli Ushakoyal**, in Writ Petition No. 2035/2001 passed by Hon'ble High Court of Bombay on 11.4.2014. However, as rightly submitted by Ld. Advocate Shri P. J. Kamat for the Party II once the Court held that the enquiry is fair and proper, in the absence of any allegations of victimization, malafides or unfair labour practice, it has no power to interfere with the punishment imposed. The Party I has not stepped in the witness box nor pleaded that his past records are clean and unblemished nor produced any evidence to substantiate his submission. The demotion order dated 25.7.2008 makes reference of

considering the past records of Party I and therefore, the above submissions and the reliance on the above case will not take the case of Party I, anywhere.

13. Admittedly, the Party I had not pleaded nor proved that action of Party II in imposing penalty of demotion to lower grade is unjustified and illegal nor brought anything on record to prove that the past service record is clean and unblemished. There is no justification on the part of Party I not to lead evidence that the action of Party I is not legal and justified, inspite of several opportunities. It is well settled in the case of ***Mahindra and Mahindra Ltd. vs. N. B. Narawade, (2005) I CLR 803*** that after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/ Industrial Tribunal in interfering with the quantum of punishment awarded by the Management where the concerned workman is found guilty of misconduct. The discretion which can be exercised under section 11-A is available only on the existence of certain factors, like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the Court, or the existence of any mitigating circumstances which required the reduction of the sentence, or the past conduct of the workman which may persuade the Court to reduce the punishment. In the absence of any such factors existing, the Labour Court cannot by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the punishment.

14. Discernibly, the Party II has only awarded punishment of demotion dated 25.7.2008 to lower grade after issuing a show cause notice dated 23.5.2008 to him at Exb. E-1 colly, wherein the past service records of Party I was brought to his notice including an incident of assaulting a co-worker and imposition of punishment of stoppage of one increment in respect of misconduct by him during the service period. The Party I in reply dated 22.5.2008 claimed that the enquiry conducted against Party I was not fair and the punishment of demotion to lower post is too harsh and disproportionate. The Party I however has not disputed his past records referred in the show cause notice dated 23.5.2008. The Party II considering the grave nature of offence of attempt to assault, abuses and threats to the superior officer is entitled to impose punishment of dismissal from service as observed in the case of ***Mahindra and Mahindra Ltd.*** *supra*, however, the Party II has taken a lenient view inspite of proved serious misconduct and past records of Party I with an intent to improve himself by retaining him in service and imposing a minor punishment of demotion as per Clause 30(a)(iv) of the Certified Standing Orders of the Company and therefore, no interference is called for in the punishment awarded by Party II and hence, the action taken against Party I is just and proper. It is therefore the above issues are answered accordingly.

ISSUE NO. 4:

15. No evidence has been led by Party II that dispute referred is not an industrial dispute as defined under section 2(k) of the Industrial Disputes Act and therefore, above issue No. 4 is answered in the negative.

16. In the result, I pass the following:

O R D E R

i. It is hereby held that the action of the management of Goa Shipyard Ltd. in imposing a penalty of demotion to Lower Grade (Unskilled Gr. II) w.e.f. 25.07.2008 on their workman, Shri Roque Antao is legal and justified.

ii. The Party I workman is therefore not entitled to any reliefs.

iii. No order as to costs.

iv. Inform the Government accordingly.

VINCENT D'SILVA, Presiding Officer

Dated : 14.05.2018
Place : Panaji – Goa.

नई दिल्ली, 28 मई, 2018

का.आ. 878.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कार्मिक विभाग और रक्षा मंत्रालय, नई दिल्ली का प्रबंधन एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 2, दिल्ली के पंचाट (संदर्भ संख्या 69/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.05.2018 को प्राप्त हुआ था।

[सं. एल-42012/66/2014-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 28th May, 2018

S.O. 878.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 69/2014) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the Management of Personnel and Ministry of Defence, New Delhi and their workmen, which was received by the Central Government on 17.05.2018.

[No. L-42012/66/2014-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO. 2, DWARKA COURTS COMPLEX : NEW DELHI

ID No. 69/2014

Jagan Lal Chauhan
s/o. Shri Mubarik Lal Chauhan
r/o. 35/444, Trilok Puri,
Delhi 110091

Through General Secretary,
All India Central Govt. Canteen Employees Association and
Canteen Mazdoor Sabha (Regd)
F-48 Lado Sarai, New Delhi …Workman/Claimant

Versus

1) Management of Department of Personnel,
Govt. of India, through
The Secretary, Govt. of India,
North Block, New Delhi 110001

2) Ministry of Defence, through
The Joint Secretary (Training & CAO),
E Block Hutment,
Dalhousie Road,
New Delhi 110011 …Management/Respondent

AWARD

In the present case, matter was referred to Central Government Industrial Tribunal cum Labour Court No.2, New Delhi vide letter No.L-42012/66/2014-IR(DU) dated 17.07.2014 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) for adjudication of an industrial dispute, terms of which are as under:

> 'Whether refusal to grant ACP in the scale of 4000 -6000 to Shri Virender Singh (sic.Jagan Lal Chauhan), the workman by the management of Non Statutory Canteen, Ministry of Defence under Joint Secretary training and CAO in the tune of Memo No3/4/2005-Dir© dated 25.7.2012 is just, fair and legal ? If not what relief the workman concerned are entitled to ?"

2. Both parties were put to notice and the claimant., Shri Jagan Lal Chauhan filed his statement of claim followed by amended claim application, with the averments that the workman was appointed as Bear in the pay-scale f Rs.160-275/- in the non statutory canteen under the control of the Management and thereafter he was designated as Asstt.Halwai cum Cook to which post he is working w.e.f. 1/5/1989. The Departmental canteen under the DRDO recruitment and promotion rules was published on 26/3/1999 and accordingly, in citu promotion 60 bears were granted the pay scale of Rs.4000-6000/- in the promotional grade of cook. A demand notice was submitted by the workman through the Association for grant of pay scale of Rs.4000-6000/- w.e.f. 9/8/1999 in the case of claimant w.e.f. 2001 but the same was not considered by the Management despite the fact that an order dated 14/1/2008 was issued by the Department of Personnel that educational qualifications are not required for the grant of ACP for the post of Bear, Tea Coffeeneator, Wash Boy etc. The workman has prayed that 1st ACP in the pay scale of Rs.4000-6000/- and other benefits/grade pay of Rs.2400/- may be ordered to be granted to him.

3. Management resisted the claim of the Workman, by filing written statement wherein preliminary objections were taken inter-alia that the claimant has no locus standi to file the claim as there is no industrial dispute between the claimant and the Management. It has been objected that there is absolutely no espousal and even the so called espousal list has not been provided by the claimant. The demand raised by the claimant is unfounded and devoid of any universal character. The statement of claim is wrong and false. The prayer of the claimant does not stand as he was appointed as Asstt.Halwai cum cook and not bearer and was given 1st and 2nd financial upgradation under the old ACP Scheme of the Govt. and so question of denial/refusal of ACP in the scale of Rs.4000-6000/- does not arise. Prayer has been made for rejection of the claim petition.

4. On the pleadings of the parties, following issues were framed on 22/12/2016 :-

1) Whether refusal to grant ACP in the scale of 4000-6000/- to Shri Jagar Lal Chauhan, the workman by the management of Non Statutory Canteen, Ministry of Defence, under Joint Secretary Training and CAO in the tune of memo No.3.4.2005 (c) dated 25/7/2012 is just, fair and legal ? If so, its effect ?

2) Whether canteen employees who are holders of civil post ad classified as under General Central Service Post can seek relief under Industrial Dispute Act ?

3) Whether the legal and valid espousal was given by the workman ?

4) To what relief the workman is entitled to and from which date ?

5. Number of opportunities were granted to the Claimant to lead evidence in support of his claim but he failed to adduce any evidence. He even did not enter the witness box either to substantiate the averments made in the claim petition or to rebut the case of the Management that the claimant being employed to the managerial post, does not come within the ambit of definition of Workman. Perusal of the record shows that neither the claimant nor his Authorised Representative participated in the proceedings before the Tribunal since 8/1/2018 onwards, despite the fact that matter was adjourned time and again and ultimately this Tribunal vide order dated 2/4/2018 was constrained to reserve the matter for passing the award, as it seemed that the claimant was not at all interested to prosecute his claim petition.

7. In view of the fact that the claimant has not led any evidence in support of his claim, this Tribunal has no option but to pass No Dispute Award in the matter. Since the matter has not been decided on merits, there will be no bar for the claimant to file afresh claim petition in accordance with law for adjudication of the controversy in issue or to seek any other relief to which he is otherwise entitled to. Award is passed accordingly.

15.05.2018

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 28 मई, 2018

का.आ. 879.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, एनसीपीएस, एनटीपीसी, दादरी (उत्तर प्रदेश) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 2, दिल्ली के पंचाट (संदर्भ संख्या 113/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.05.2018 को प्राप्त हुआ था।

[सं. एल-42012/57/2013-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 28th May, 2018

S.O. 879.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 113/2013) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the General Manager, NCPS, NTPC, Dadri (Uttar Pradesh) & Others and their workmen, which was received by the Central Government on 17.05.2018.

[No. L-42012/57/2013-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO. 2, DWARKA COURTS COMPLEX : NEW DELHI

ID No. 113/2013

Suresh Singh
S/o. Shri Bani Singh
r/o. Village Tatarpur, P.O. Udayrampur Nagla 201009
Distt. Gautam Budh Nagar (UP) …Workman/Claimant

Versus

1. The General Manager,
NCPS, NTPC, Dadri,
Gautam Budh Nagar,
Uttar Pradesh.

2. M/s M.S. Systems International Pvt. Ltd.,
104, Arvind Chambers, Sai Service Compound,
Western Express Highway,
Andheri (E),
Mumbai 400069 …Managements/Respondents

AWARD

In the present case, matter was referred to Central Government Industrial Tribunal cum Labour Court No.2, New Delhi vide letter No.L-42012/57/2013-IR(DU) dated 30.08.2013 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) for adjudication of an industrial dispute, terms of which are as under:

> 'Whether the action of M/s MS Minimex System Intgernationl (P) Ltd. contractor of NCPS, NTPC, Dadri in terminating the services of workman Shri Suresh Singh without complying of Section 25-F, G, H of the I.d. Act, 1947 is unjustified ? To what relief workman is entitled to ?'

2. Both parties were put to notice and the claimant., Shri Suresh Singh filed statement of claim. As per the averments made in the claim petition, the workman was appointed as Guard in August, 2009 on a monthly salary of Rs.3250/- and was posed in the office of Management No.1 through Management No.2. He always performed his duties with due diligence and to the entire satisfaction of the Management. His last drawn salary was Rs.6696/- per month and his post was of permanent nature. On 1/2/2013 the workman reported for duty as usual but he was not allowed to perform his duty rather it was told that his services are no longer required and thus, his services stood terminated without any notice and wrongfully, despite the fact that he worked continuously from August, 2009 to January, 2013. The Management withheld the earned wages of the workman for the month of January, 2013 and also not paid the earned leave, bonus and other benefits to the workman. It is alleged that services of the workman have been terminated without any notice or enquiry and as such same is in violation of the provisions of the Act. Hence, prayer has been made for passing an Award for reinstatement of the workman in the service as per rules with continuity of service and with full back wages and all consequential benefits. Alongwith earned wages for the month of January, 2013.

3. Management No.1 and 2 have resisted the claim of the Workman, by filing separate replies. Management No.1 took preliminary objections that the claimant was initially deployed by M /s Shishodia Securities, a sub contractor of M/s Mx System International Pvt. Ltd. from 1/8/2009 to 31/3/2010 and thereafter the claimant was on the rolls of M/s Mx System International Pvt. Ltd for the period from 1/4/2010 to 31/1/2013. There is no relationship of employer and employee between the Management No.1 and the workman because claimant was never employed by management of NTPC.

4. Management No.2 also pleaded in its reply that claimant/workman was initially deployed by a sub contractor M /s Shishodia Securities, from 1/8/2009 to 31/3/2010 and thereafter the claimant was on the rolls of M/s Mx System International Pvt. Ltd for the period from 1/4/2010 to 31/1/2013, which is the total length of his service with Management No.2. His employment was for a specific work and for a limited period, which fact has been suppressed by the workman and has filed the claim with vested interest. The claimant/workman was never terminated rather he

himself abandoned his services on 1/2/2013 without any notice and information to the Management No.2. Prayer has been made for dismissal of the claim petition.

5. on the pleadings of the parties, following issues were framed on 15/05/2014 :-

1) Whether the action of M/s MS Minimex System Intrernational (P) Ltd., contractor of NCPS, NTPC, Dadri in terminating the servies of workman Shri Suresh Singh without complying of Section 25 F, G, H of the ID Act is unjustified ? If so, its effect ?

2) To what relief the workman is entitled to ?

6. The Claimant in support of his case examined himself as W.W.1 and tendered his affidavit Ex.WW1/A alongwith documents Ex.WW1/1 to WW1/14

7. On the other hand, the Management No.1 in support of its defence examined Shri Anil Kumar Chawla, Dy.General Manager (HR) as MW1 who tendered his evidence by way of affidavit Ex.MW1/A alongwith documents Ex.MW1/1 and MW1/2. Management No.2 to rebut the case of the workman, examined Mr.Vijay Kumar Sadhwani, Project Officer as MW2 who also tendered his evidence by way of affidavit Ex.MW2/A alongwith documents Ex.MW2/1 to Ex.MW2/4.

8. While the matter was at the stage of final arguments, efforts for conciliation between the parties were made and ultimately parties amicably settled the matter. The claimant Suresh Singh vide separate statement made before this Tribunal on 12/4/2018 stated that he has settled the matter with the Management in full & final settlement of his claims, by accepting an amount of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand) by way of two cheques bearing Nos.077349 and 409394 drawn on IDBI Bank for Rs.1 lakh and Rs.50,000/- respectively. Similarly, statement of Shri Vijay Kumar Sadhwani, Project Officer of Management No.2 was also recorded who has accepted the statement of the workman and stated that matter has been finally settled between the parties. Since the claimant has accepted a sum of Rs.1,50,000/-by way of two cheques from Management No.2 in full and final settlement of all his claims, as such it is held that the claim/dispute of the workman/claimant stands finally settled. Statement of the parties shall form integral part of this Award. Award is passed accordingly.

Dated 14.05.2018

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 28 मई, 2018

का.आ. 880.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार प्रधानाचार्य, सेना प्रोद्योगिकी संस्थान, पुणे और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 2, मुंबई के पंचाट (संदर्भ संख्या सीजीआईटी-2/08 ऑफ 2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.05.2018 को प्राप्त हुआ था।

[सं. एल-14011/15/2012-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 28th May, 2018

S.O. 880.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (CGIT-2/08 of 2013) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Mumbai as shown in the Annexure, in the industrial dispute between the employers in relation to the Principal, Army Institute of Technology, Pune and Others and their workmen, which was received by the Central Government on 16.05.2018.

[No. L-14011/15/2012-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT : M. V. Deshpande, Presiding Officer

REFERENCE NO. CGIT-2/8 of 2013

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

ARMY INSTITUTE OF TECHNOLOGY

1. The Principal,
Army Institute of Technology,
Dighi,
Pune

2. The Director,
Army Institute of Technology,
Dighi,
Pune

AND

THEIR WORKMEN

The General Secretary,
Bhartiya Mazdoor Sangh,
185, Shaniwar Peth,
Pune – 411 030.

APPEARANCES:

FOR THE EMPLOYER : Ms. Govitrikar, Advocate

FOR THE WORKMEN : Mr. R.G. Kadu, Representative

Mumbai, dated the 4th April, 2018.

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-14011/15/2012 – IR (DU) dated 28.02.2013. The terms of reference given in the schedule are as follows :

> "Whether the action of the management of Army Institute of Technology (AIT), Pune by not implementing the recommendation of VIth Pay Commission to non-teaching staff is justified ? If not, what relief the Union is entitled to ?"

2. After the receipt of the reference, both the parties were served with the notices. They appeared through their respective representatives.

3. The applicant Sangh has filed statement of claim Ex.4. According to the applicant, the issue of non-teaching staff, AIT college, Dighi was initially raised before the RLC, Division Pune on 17.7.12. AIT Pune is a reputed Engineering collect of Army Welfare Education Society adjutant General Branch Army Head quarter, Delhi started in 1994 with special approval of Hon'ble Supreme Court of India, Director, All India Council of Technical Education, Director of Technical Education, Maharashtra State. Therefore AIT is bound to follow all the regulations of Govt. of Maharashtra, University of Pune. The college is affiliated to University of Pune. College is run by Army Welfare Education Society adjutant General Branch Army Head quarter, Delhi. The fund is controlled by adjutant General Branch Army Head quarter, Delhi. As such the college is directly under the Ministry of Defence.

4. According to the applicant since from beginning AIT college followed rules & regulations of DET, All India Council of Technical Education, Govt. of Maharashtra, Director of Technical Education, Maharashtra State and University of Pune. Proper advertisement for appointment of the staff have been published as per Govt. of Maharashtra, University of Pune rules & regulations. Proper appointment orders to the non-technical staff have been given as per rules & regulations of Govt. of Maharashtra, University of Pune mentioning therein that the services will be governed by the rules & regulations of Pune university, Govt. of Maharashtra and Army Welfare Education Society and Institute. Since from beginning pay & allowances & rules are granted as per the Govt. of Maharashtra rules to all non-teaching staff.

5. It is then the case of the applicant that in 1996, Govt. of Maharashtra declared & implemented 5th Pay Commission. Accordingly AWES/AIT management also implemented 5th Pay Commission to non-teaching staff as per Govt. of Maharashtra orders. AIT management have also paid bonus to non-teaching staff as per Govt. of Maharashtra orders.

6. According to the applicant, Govt. of Maharashtra declared & implemented 6th Pay Commission w.e.f. 1.1.2006. AIT is also bound to implement 6th Pay Commission to its non-teaching staff. But till date AWES/AIT management has not implemented 6th Pay Commission to its non-teaching staff. Instead of implementing 6th Pay Commission to its non-teaching staff a huge amount of funds accumulated from investments in AIT have been returned to AWES, New Delhi. Now the management is imposing its own rules as regards the implementation of 6th Pay Commission to non-teaching staff w.e.f. 1.6.09 instead of 1.1.06. The applicant is therefore asking that the opponent be directed to implement 6th Pay Commission to all non-teaching staff w.e.f. 1.1.06 as per 6th Pay Commission order of Govt. of Maharashtra. The applicant is also asking for arrears to be paid to all regular non-teaching staff w.e.f. 1.1.06.

7. The respondent management resisted claim by filing written statement Ex.5 contending therein that AIT should be considered as a private college. AIT is providing educational facilities purely for the wards of Army personnel. No public funds were invested and granted for running the college.

8. According to the opponent management, Govt. of India, Ministry of Defence has granted land to enable the college to come up. Ministry of Defence has leased land to Symbiosis Institute of Management Studies of Kirkee-Pune. However, the institute has been assigned the status of Govt. Institute. The Directors of the Institutions has also been a Army Officers [Retd.] since its inception and their own non-teaching staff are also not beneficiary of pay commissions.

9. According to the management, ATS is a private and unaided college and its running is depending upon organizational structure that it is a society that is AWES decides. AIT will have to abide the directions of AWES for allocations of funds for various aspects. AWES have been providing for better facility and salaries compared to other colleges in Pune. Senior Army Officers are holding the appointments of Patron-in-Chief, Patron & Chairman. Students of AIT and other colleges run by AWES are the wards of Army personnel. It is thus contention of the respondent management that being private college, AIT has to follow directions of AWES in respect of salaries to be paid to non-teaching staff and as such there is no question of implementing 6th Pay Commission and giving benefits of the 6th Pay Commission to non-teaching staff.

10. Following issues are framed at Ex.7. I reproduce the issues along with my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1	Whether the action of management in not implementing recommendations of 6th Pay Commission to non-teaching staff is justified ?	No
2.	If not, what relief the workmen are entitled to ?	As per final order
3.	What order ?	As per final order

REASONS

Issue No. 1

11. So far contentions go, it seems to be admitted position that AIT Engineering college of Army Welfare Education Society is affiliated to University of Pune. Even it seems to be admitted position that the advertisement for the appointment of the staff have been published as per the Govt. of Maharashtra, University of Pune rules and regulations and in the advertisement it has been clearly mentioned that the rules and regulations and pay allowances as per Govt. of Maharashtra, University of Pune shall be applicable to the staff. This is evident from the advertisement issued by the institution at Ex.2. Even on going through the appointment order at Page 60 to 63 [collectively] below Ex.9 exhibited as Ex.26, it is clear that the services of the employees appointed namely V.K. Sarvankar, Thomas Moras will be governed by the rules and regulations of Pune University, State Govt. of Maharashtra, Army Welfare Education Society and this institution.

12. Admittedly in 1996, AWES / AIT management has implemented 5th Pay as on 1.1.96 and paid arrears to non-teaching staff as per the Govt. of Maharashtra rules. Witness examined on behalf of the management namely Colonel Cannuvellil has admitted in his cross examination that the State rules are to be followed after the institution is affiliated to the university and all the government resolutions passed by the Govt. of Maharashtra are binding on the institution. He even admits that the institution started implementing 6th Pay Commission to non teaching staff since 1.6.2009. In view of these admissions, it can be said that when there is government notification issued by Govt. of Maharashtra for

implementation of 6th Pay Commission to all the employees of the institution then that government resolution passed by Govt. of Maharashtra is binding on the institution.

13. Learned Counsel for the first party management submitted that any such notification issued by Govt. of Maharashtra is not applicable to the institution as it is unaided private Engineering college. Submission is to the effect that only source of funds that AIT are generated through the collection of fees from the students. AWES is an independent and registered society who controls and regulate the administration of all colleges and schools which are run by it. Submission is also to the effect that Directors and Jt. Directors are rendering their duties on deputation and such deputation is permitted by the Ministry of Defence under specific procedure. In this view it is submitted that the appointments of these officers are honorary and no financial or any other benefits accrued to such appointment orders. Precisely, the submission is that the management cannot be compelled to pay the salary & other allowances to the employees in terms of recommendations of 6th Pay Commission in absence of any statutory obligation to make such payment since the Govt. of Maharashtra has not taken any policy decision in respect of implementations of recommendations made by 6th Pay Commission for teaching & non teaching staff in unaided private education institutions.

14. This submission though sounds attractive is not acceptable since admittedly the rules and regulations of State government are made applicable to AIT institution and rule 2 (1) of the said rules stipulates that those rules apply to full time non-teaching employees of the affiliated non government aided colleges.

15. In view of decision in case of Secretary Mahatma Gandhi Mission & Anr. V/S. Bharatiya Kamghar Sena & Ors, Civil Appeal No. 115 – 116 of 2017 arising out of SLP [C] – 26523 – 26524 of 2012, it has been observed that non-extension of benefits of pay commissions to the employees of un-aided educational institution which otherwise function under the control & supervision of State Govt. would be dereliction of the constitution mandate and violation of article 14. In para 87 of the judgment it has been observed that so far as non teaching staff are concerned, the appellant have no excuse for making such submissions because in earlier round of litigation non teaching employees of the appellant, succeeded both before the High Court & this court in obtaining the appropriate directions to the appellant and other authorities to revise the pay scales of the employees in tune with 5th Pay Commission.

16. In view of this, it appears that the management has already implemented and started paying benefits of 6th Pay Commission to non teaching staff since from 1.6.09. Since admittedly the institution is affiliated to Pune University and rules & regulations of the State Govt. of Maharashtra are applicable to the institution then it is for the institution to work out the remittances and find out the ways & means to meet the financial liability arising out of the obligation to pay the revised pay scales. Even otherwise second party union has come out with the case that the funds are being given to the society from adjutant general branch Army HQ, New Delhi.

17. The fact remains that 6th Pay Commission is already granted by the management from 1.6.09 and the question is only for getting the difference of 6th Pay Commission. In view of action of the management i.e. first party who started implementation of 6th Pay Commission to regular non-teaching staff w.e.f. 1.6.09, their action by non-implementing the recommendation of 6th Pay Commission to non-teaching staff with effect from 1.1.06 is not justified. Issue No.1 is therefore answered accordingly as indicated against it.

Issue No. 2 & 3

18. In view of my findings to issue No.1, I pass the following order.

ORDER

1. It is declared that action of management in not implementing the recommendation of 6th Pay Commission to non-teaching staff is not justified.

2. The management first party is directed to implement 6th Pay Commission to non-teaching staff of ATS College, Dighi, Pune w.e.f. 1.1.2006 and pay arrears w.e.f. 1.1.2006 and follow the rules and regulations of Govt. of Maharashtra, University of Pune.

Date: 04.04.2018

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 28 मई, 2018

का.आ. 881.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कमांडिंग ऑफिसर, भारतीय थल सेना, नासीराबाद, अजमेर और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के

बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 06/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.05.2018 को प्राप्त हुआ था।

[सं. एल-14011/24/2014-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 28th May, 2018

S.O. 881.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 06/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the Commanding Officer, Bhartiya Thal Sena, Nasirabad, Ajmer & Others and their workmen, which was received by the Central Government on 16.05.2018.

[No. L-14011/24/2014-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

PRAMOD KUMAR CHATURVEDI, PRESIDING OFFICER

I.D. 6/2015

Reference No. L-14011/24/2014-IR (DU) Dated: 31.12.2014

Shri Babu Khan
S/o Shri Rama Khan
C/o President, Ajmer Jila Asangathit
Shramik Sang,306/34, Gurjar Tila, Nagra,
Ajmer – 305001.

V/S

1. The Commanding Officer, Bhartiya Thal Sena, 9 Horse,
Alfa Mess Marfat 56, APO, Nasirabad, Ajmer – 305601.

2. The Station Commandant, Bhartiya Thal Sena, Marfat 56,
APO, Nasirabad, Ajmer -305601.

AWARD

2.5.2018

1. The Central Government in exercise of the powers conferred under clause (d) of Sub Section 1 & 2 (A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

> ''क्या प्रबंधन कमांडिग ऑफिसर, 9 होर्स, एल्फा मेस मार्फत 56, ए.पी.ओ. भारतीय थल सेना, नसीराबाद एवं स्टेशन कमाण्डेंट, भारतीय थल सेना, मार्फत 56, ए.पी.ओ. नसीराबाद जिला अजमेर (राजस्थान) द्वारा श्री बाबू खां पुत्र रामा खान को दिनांक 04.02.2014 से मौखिक आदेश द्वारा सेवा से बर्खास्त करने की कार्यवाही वैद्यानिक एवं न्यायसंगत है, यदि नही तो प्रार्थी किस राहत का और कब से पाने का हकदार है ?''

2. After serving the notice the applicant union Ajmer Jila Asangathit Shramik Sangh, Ajmer submitted the statement of claim concerning the workman Sh. Babu Khan on 24.4.2015 alleging that he has been working since 1.8.2011 as Mess boy but his identity card & temporary pass were taken back in the garb of police verification. His police verification was also being done. He worked till 31.10.2012. Thereafter his period of engagement were extended from 3.11.12 to 31.12.12 then from 1.1.12 to 30.6.12. Later it was extended to 31.12.13 & 30.6.2014. His date of birth was recorded as 9.1.1996 in the records. He was called as 'Fatigue men' but his services were orally terminated without showing any reasons. Therefore, he has prayed for his reinstatement of his service and also for order for payment of arrear of wages.

3. The application was enclosed with number of documents like police verification, temporary entry passes & identity card along with service certificate.

4. The opposite parties, The Commanding Officer, Bhartiya Thal Sena, 9 Horse, Alfa Mess Marfat 56, APO, Nasirabad, Ajmer and The Station Commandant, Bhartiya Thal Sena, Marfat 56, APO, Nasirabad, Ajmer, submitted their joint written statement submitting that the petition filed by the applicant is not maintainable being false, frivolous & fabricated. Applicant was not appointed by the answering respondent on any post. He was simply working as helper in the mess for a consolidated salary & wages from time to time under Army Rule. Therefore, the reference is liable to be dismissed.

5. Since, last several dates the applicant union or the workman has been absent since 27.10.2016, 19.12.2016. On 20.3.2017 applicant union moved an application praying that the representative of the applicant workman has been suffering with cardiac ailment then again he stopped coming 1.6.2017, 27.7.2017, 18.10.2017, 4.12.2017. Today also on 2.5.2018 the applicant side is absent and on every date opposite party used to appear.

6. This reference is also not maintainable because any person who is working in the Indian Army would not be called as workman under section 2(s) of the Industrial Disputes Act. The provisions of section 2(s) of the Industrial Disputes Act are reproduced as under :-

> "(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person----
>
> (i) Who is subject to the Air Force Act, 1950 (45 of 1950) , or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957) ; or
>
> (ii) Who is employed in the police service or as an officer or other employees of a prison, or
>
> (iii) Who is employed mainly in a managerial or administrative capacity, or
>
> (iv) Who, being employed in a supervisory capacity, draws wages exceeding (ten thousand rupees) per mensem or exercises, wither by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

7. It is also noteworthy that the applicant union has not stated in the statement of claim that he was recruited by the due process of the recruitment, therefore, in the absence of the valid recruitment it shall be called as back door entry.

8. Thus, in the light of the aforesaid discussion, the reference is disposed off with observation that the oral termination of the service of the workman cannot be called as illegal and unjust. The proper remedy is for him is to approach the proper forum given in the Army Act.

9. Award as above.

PRAMOD KUMAR CHATURVEDI, Presiding Officer

नई दिल्ली, 28 मई, 2018

का.आ. 882.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, आयुक्त, एनडीएमसी, नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 1, दिल्ली के पंचाट (संदर्भ संख्या 227/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.05.2018 को प्राप्त हुआ था।

[सं. एल-42011/130/2015-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 28th May, 2018

S.O. 882.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 227/2015) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the

Commissioner, NDMC, New Delhi & Other and their workmen, which was received by the Central Government on 14.05.2018.

[No. L-42011/130/2015-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE PRESIDING OFFICER : CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 1: ROOM No. 511, DWARKA COURT COMPLEX, SECTOR 10, DWARKA, DELHI

ID No. 227/2015

Shri Satpal S/o Shri Charan Singh, represented by
MCD General Mazdoor Union,
Room No.95, Barrack No.1/10,
Jam Nagar House, Shah Jahan Road,
New Delhi …Workman

Versus

The Commissioner,
North Delhi Municipal Corporation,
4th Floor, Civic Centre, Minto Road,
New Delhi 110 002

The Commissioner,
South Delhi Municipal Corporation,
9th Floor, Civic Centre, Minto Road,
New Delhi – 110 002 …Management

AWARD

Reference under Section 10 sub section (2A) of the Industrial Disputes Act, 1947(in short the Act) was received from the Central Government, Ministry of Labour and Employment vide it orders No.L-42011/130/2015-IR(DU) dated 27.10.2015 for adjudication of an industrial dispute with the following terms:

> 'Whether the action of the management of South Delhi Municipal Corporation, in not promoting Shri Satpal S/o Shri Charan Singh as Chaudhary in the pay scale of Rs.3050-4590 revised from time to time with effect from 01.08.1993 is fair and legal? If not, to what relief the workman is entitled to and from which date?'

2. Both the parties were put to notice and the workman Shri Satpal filed his statement of claim, wherein it is alleged that he has been allotted work of Chaudhary with effect from 01.08.1993 by the competent officers of Horticulture Department and was posted under Central Zone to work under Deputy Director of Horticulture but he has been denied pay scale of Chaudhary, revised from time to time. No qualification is prescribed for promotion to the post of Garden Chaudhary and recruitment rule for Garden Chaudhary is still not notified by the management. Action of the management is alleged to be illegal & unjustified and amounts to unfair labour practice. Duties of mali is presently of an unskilled workman whereas duties of Chaudhary is skilled in nature belonging to Group C category of employees. Management has fixed different pay scales of mali, Chaudhary etc. in accordance with their job and non-grant of pay scale to the claimant herein amounts to forced labour and unfair labour practice. The workman has got payment of salary in the lower pay scale of mali, i.e. Rs.2550-3200 revised from time to time and has been denied the scale of Chaudhary, i.e. for his performing the duty of Chaudhary with effect from 01.08.1993. Duties of mali is presently of an unskilled workman whereas duties of Chaudhary is skilled in nature belonging to Group C category of employees. Copy of office order indicating the names of officiating chaudharies as issued by the officers of Horticulture is annexed and the name of the claimant appears at serial No.34. Action of the management is alleged to be illegal & unjustified and amounts to unfair labour practice. There is also reference to the judgement of Hon'ble High Court of Delhi in the case of MCD versus Sultan Singh and others dated 27.07.2011, wherein Hon'ble High Court under similar circumstances while considering question of payment of wages of Garden Chaudhary to those malis who are performing duties and functions of Garden Chaudhary, held that such malis be paid the difference in pay of mali and Garden Chaudhary. The said judgement was also challenged before the Hon'ble Supreme Court of India by filing S.L.P., which was dismissed as withdrawn by the management. Management is now duty bound to pay wages to the workman in the scale of Chaudhary with effect from 21.03.1996. It is also averred that similar situated workmen who were performing duty of Chaudhary were granted pay scale of Chaudhary from the date when they were asked to perform duty on the higher post and management has challenged the order dated 27.07.2011 of the Labour Court in

the matter of MCD vs Sultan Singh as well as before the Hon'ble Supreme Court of India by Special Leave to Appeal No.S20069/2011 and the plea by MCD has been dismissed by both, before the High Court as well as the Hon'ble Supreme Court. Workman, herein, is also similarly situated and doing work of Chaudhary and as such, entitled to same benefits. Finally, it is prayed that an award may be passed in his favour.

3. It is pertinent to mention here that initially in the array of parties as received from the appropriate Government, North Delhi Municipal Corporation was a party to the case. However, later an application was moved by the claimant for impleadment of South Delhi Municipal Corporation, as a party. As such, South Delhi Municipal Corporation, was impleaded as a party by this Tribunal vide order dated 03.10.2016.

4. Management has demurred claim of the workman by taking preliminary objections, inter alia, present dispute not being an industrial dispute as no demand notice has been served upon the management, delay & laches etc. In para 2 of the preliminary objection, it is admitted that the workman herein was engaged on the post of mali on muster roll basis and was later on regularized on the same post of mali. There is prescribed procedure for promotion to the post of Garden Chaudhary and there must be sanctioned/vacant post of Garden Chaudhary to which the workman can lay claim when he has passed trade test conducted by the department. Claimant has not passed the said trade test nor is he performing duties of Garden Chaudhary. No orders have been passed by any competent authority for assigning the duty of Garden Chaudhary in any manner to the claimant. Management, on merits, have denied material averments. It is also denied that the workman herein was performing duties of Chaudhary with effect from 01.04.1989. Accordingly, it is prayed that claim of the workman herein is liable to be dismissed, being devoid of merits.

5. Against this factual background, based on pleadings of the parties, this Tribunal vide order dated 13.07.2017 framed the following issues:

(i) Whether reference is not legally maintainable, in view of the various preliminary objections?

(ii) In terms of reference

6. Claimant, in support of his case, examined himself as WW1 and tendered in evidence his affidavit Ex.WW1/A and he also tendered in evidence document Ex.WW1/1. Management, in order to rebut the case of the claimant, examined Shri Sube Singh, Assistant Director (Horticulture) as MW1, whose affidavit is Ex.MW1/A and also relied on documents Ex.MW1/1 and Ex.MW1/2.

7. I have heard Shri B.K. Prasad, A/R for the claimant and Ms.Savita Madan, A/R for the management.

Findings on Issue No. (i)

8. It is clear from the preliminary objections taken in the written statement by the management that the management has raised objection that no demand notice has been served upon the management nor the MCD General Mazdoor Union has any locus standi to raise the present dispute as the union is not a recognized union of the management. To my mind, there is no requirement of law that a dispute can be raised only by a recognized union. In this regard, it is appropriate to refer to the judgement of the Hon'ble Apex Court in the case of State of Bihar Vs. Kripa Shankar Jaiswal (AIR 1961 (2) SC Report 1) wherein also objection was taken on behalf of the management that the union was not a registered under the Trade Union Act on the date of the settlement and said plea was rejected by observing as under:

> 'Held, that for a dispute to constitute an industrial dispute it is not a requisite condition that it should be sponsored by a recognized union or that all the workmen of an industrial establishment should be parties to it. A settlement arrived at in course of conciliation proceedings falls within Section 18(3)(a) and (d) of the Industrial Disputes Act and as such binds all the workmen though an unregistered union or only some of workmen may have raised the dispute. The absence of notice under Section 11(2) by the Conciliation Officer does not affect the jurisdiction of the conciliation officer and its only purpose is to apprise the establishment that the person who is coming is the conciliation officer and not a stranger. Any contravention of Section 12(6) in not submitting the report within 14 days may be a breach of duty on the part of the conciliation officer ; it does not affect the legality of the proceedings which terminated as provided in Section 20(2) of the Act.

9. Admittedly, in the present case, reference has been made under Section 10 sub Section (2A) of the Act for adjudication. It is now well settled position in law that when a reference has been made for adjudication to the Tribunal or Labour Court, as the case may be, it is paramount duty of the court to decide the same on merits, irrespective of the pleas taken by the management. The dispute in the case in hand cannot be said to be stale for the simple reason that there is no previous adjudication of the matter between the parties from a competent court nor that there is inordinate delay in approaching this Tribunal by the workman.

10. It has been held by the Hon'ble Apex Court in the case of Raghubir Singh vs. General Manager (2014) Lab.I.C. 4266 - (2014) 10 SCC 301 that a reference for adjudication to the Industrial Tribunal can be made by the appropriate Government at any time and provisions of Limitation Act does not apply. There are clear observations in the above judgement that industrial dispute is to be decided by the Tribunal or Labour Court on merits, irrespective of the pleadings on limits. Consequently, this issue is decided in favour of the workman and against the management.

Findings on Issue No.(ii)

11. Now, the main issue which requires determination in the case in hand is whether the workman herein is entitled for grant of pay scale of 3050-4590 as revised from time to time alongwith consequential benefits. It is clear from pleadings of the parties that initially the workman herein was appointed as mali on daily wage basis and later on he was regularized on the same post of mali. This fact has been admitted even by the management in para 3 of the preliminary objections.

12. There is also ample evidence on record that the workman herein was performing duty as officiating Chaudhary. It is clear from perusal of office order dated 12.08.2004 Ex.WW1/1 that that name of the claimant finds mention at serial No.34 in the list of acting chaudharies attached with the letter and in the column *'Karyavahak Chaudhary ke roop me kab se karya kar raha hai'*, it is mentioned '01.08.1993'. Claimant, in order to prove his case, has tendered in evidence his affidavit Ex.WW1/A, wherein material averments contained in statement of claim has been reiterated. It is specifically alleged in the affidavit that he was doing work of acting Chaudhary with effect from 01.08.1983. There are also averments in his affidavit that one Shri Jai Chand has also been granted pay scale of Chaudhary by the management of MCD and Sultan Singh and others vs. MCD, who were doing work of acting Chaudhary , vide judgement of the Hon'ble High Court, i.e. in the case of MCD vs. Sultan Singh & others and necessary orders for implementation of the said judgement were issued by MCD.

13. There is no merit in the stand taken by the management in its reply, that the workman here is not entitled for promotion to the post of Chaudhary inasmuch as he has not appeared in the trade test conducted by the department. To my mind, this plea is devoid of any merit inasmuch as similarly situated other workers who were performing duties of Chaudhary, i.e. acting Chaudhary have been granted pay scale of Garden Chaudhary after judgement dated 27.07.2011 rendered by the Hon'ble High Court in the case of MCD vs. Sultan Singh as well as MCD vs. Mahipal(WP 5550 of 2010). Operating portion of the judgement in Sultan Singh (supra) of the Hon'ble Division Bench is as under:

> "28. Considering the entire facts and circumstances it is apparent that the claim of the respondents have always been that they should be paid the difference in pay of Mali/Chowkidar and the Garden Chaudhary as they were made to work on the post of Garden Chaudhary whereas the petitioner had first denied that they worked as Garden Chaudharies, then took the plea that the Assistant Director (Horticulture) was not competent to ask the respondents to work as Garden Chaudharies and that the respondents cannot be appointed to the post of Garden Chaudharies in accordance with the recruitment rules. There is no doubt that respondents are not claiming appointment to the post of Garden Chaudharies on account of having worked on ad-hoc basis on the post of Garden Chaudhary contrary to rules or that some of them not having the requisite qualifications are entitled for relaxation.
>
> 29. In the entirety of facts and circumstances therefore, the learned counsel for the petitioner has failed to make out any such grounds which will impel this Court to exercise its jurisdiction under Article 226 of the Constitution to set aside the orders of the Tribunal dated 29th January, 2010 and 7th October, 2010 as no illegality or un- sustainability or perversity in the orders of the Tribunal has been made out.
>
> 30. The writ petition is, therefore, dismissed. Parties are left to bear their own cost."

14. It is further clear that SLP was also filed by MCD before the Hon'ble Apex Court by special leave application No. S20069/2011 MCD vs. Sultan Singh and others which was also dismissed as withdrawn vide order dated 09.04.2012. It is further clear that the Hon'ble High Court in Sultan Singh case strongly deprecated the stand taken by the management that the workmen were not possessing requisite qualification or have not qualified the test etc. It was clarified that since the workmen were discharging duties to the post of Garden Chaudhary, as such, workmen were entitled for the salary of Garden Chaudhary and competent authority need not look into anything else except the fact that the workman had worked as Garden Chaudhary. Therefore, stand taken by the management that the workman herein could not qualify the test conducted by the department is without any merit and has no relevance so far as question of grant of salary against the post of Garden Chaudhary is concerned.

15. It is not out of place to mention here that even if the claimant herein was not a party in Sultan Singh case referred above, judgement of the Hon'ble High Court is binding on the management and management is required to implement the same in letter and spirit and the same is judgement in rem, and all similarly situated workmen are

required to be accorded the benefit of the said judgement of the Hon'ble High Court, which have become final. There is no question of even plea of delay and laches when management had not led any evidence to prove the same. The Hon'ble High Court has decided an abstract proposition of law, i.e. a mali who is performing duty as officiating/acting Chaudhary is entitled to the salary/wages of Chaudhary. Law is fairly settled that if a person is working on a higher post, on adhoc or temporary basis, even such workman is entitled to salary/wages of higher post, unless rules or regulations specifically provides otherwise. I find support to this view from Secretary vs. Lieutenant Governor Port Blair (1998 Lab.I.C. 598), yet in another case, Hon'ble Apex Court while considering that question of grant of benefits to similarly situated employees who were not party to the writ petition or lis in the case of State of Uttar Pradesh vs. Arvind Kumar Srivastava (2015) 1 SCC 347 observed as under:

> "The moot question which requires determination is as to whether in the given case, approach of the Tribunal and the High Court was correct in extending the benefit of earlier judgment of the Tribunal, which had attained finality as it was affirmed till the Supreme Court. The legal principles that can be culled from the judgments, cited both by the appellants as well as the respondents, can be summed up as under:
>
> (1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.
>
> (2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.
>
> (3) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularization and the like (see K.C. Sharma & Ors. v. Union of India (supra). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence."

16. In view of the discussions made herein above, it is held that the workman herein, Shri Satpal is entitled to the pay scale of Garden Chaudhary with effect from 01.08.1993 and as a corollary, management is liable pay the difference of wages of mali vis-a-vis Garden Chaudhary from the date when the workman herein was performing duties and functions of Garden Chaudhary. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : May 9, 2018

A. C. DOGRA, Presiding Officer

नई दिल्ली, 28 मई, 2018

का.आ. 883.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, आयुक्त, एसडीएमसी, नई दिल्ली एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. 1, दिल्ली के पंचाट (संदर्भ संख्या 02/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.05.2018 को प्राप्त हुआ था।

[सं. एल-42011/163/2015-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 28th May, 2018

S.O. 883.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 02/2016) of the Central Government Industrial Tribunal-cum-Labour Court-1, Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the Commissioner, SDMC, New Delhi and their workmen, which was received by the Central Government on 14.05.2018.

[No. L-42011/163/2015-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE PRESIDING OFFICER : CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 1: ROOM No. 511, DWARKA COURT COMPLEX, SECTOR 10, DWARKA, DELHI

ID No. 2/2016

The General Secretary,
MCD General Mazdoor Union,
Room No.95, Barrack No.1/10,
Jam Nagar House, Shah Jahan Road,
New Delhi …Workman

Versus

The Commissioner,
South Delhi Municipal Corporation,
9th Floor, Civic Centre, Minto Road,
New Delhi – 110 002 …Management

AWARD

Reference under Section 10 sub section (2A) of the Industrial Disputes Act, 1947(in short the Act) was received from the Central Government, Ministry of Labour and Employment vide it orders No.L-42011/163/2015-IR(DU) dated 15.12.2015 for adjudication of an industrial dispute with the following terms:

> 'Whether the action of the management of South Delhi Municipal Corporation, by not granting the status of Chaudhary Shri Zile Singh S/o Shri Sukhan in the pay scale of Rs.950-1500 revised from time to time with effect from 01.11.1999 is fair and legal? If not, to what relief the workman is entitled to and from which date?'

2. Both the parties were put to notice and the workman Shri Zile Singh filed his statement of claim, wherein it is alleged that he has been allotted work of Chaudhary with effect from 01.11.1999 by the competent officers of Horticulture Department and was posted under Chirag Delhi Zone to work under Deputy Director of Horticulture but he has been denied pay scale of Chaudhary, revised from time to time. No qualification is prescribed for promotion to the post of Garden Chaudhary and recruitment rule for Garden Chaudhary is still not notified by the management. Action of the management is alleged to be illegal & unjustified and amounts to unfair labour practice. Duties of mali is presently of an unskilled workman whereas duties of Chaudhary is skilled in nature belonging to Group C category of employees. Management has fixed different pay scales of mali, Chaudhary etc. in accordance with their job and non-grant of pay scale to the claimant herein amounts to forced labour and unfair labour practice. The workman has got payment of salary in the lower pay scale of mali, i.e. Rs.950-1500 revised from time to time and has been denied the scale of Chaudhary, i.e. for his performing the duty of Chaudhary with effect from 01.11.1999. Duties of mali is presently of an unskilled workman whereas duties of Chaudhary is skilled in nature belonging to Group C category of employees. Copy of office order indicating the names of officiating chaudharies as issued by the officers of Horticulture is annexed and the name of the claimant appears at serial No.18. Action of the management is alleged to be illegal & unjustified and amounts to unfair labour practice.

3. It is also averred in para 8 of the statement of claim that Hon'ble High Court, Delhi, in the matter of Jai Chand vs Municipal Corporation of Delhi (CW 6514/2001) has disapproved the non-payment of wages for those malis who are working on the post of Chaudhary vide its judgement dated 02.05.2003. After the above judgement of the Hon'ble Court, Municipal Corporation of Delhi (Horticulture Department) has also issued order No.ADC(Hor.)/AO(Hort)/DA-VII/05/457 dated 04.03.2005 (Annexure B). There is also reference to the judgment of Division Bench of High Court of Delhi in the matter of Municipal Corporation of Delhi vs. Sultan Singh wherein also plea of the MCD regarding non-payment of wages of Chaudhary to malis who are doing working of Chaudhary, was turned down by the Hon'ble High Court in judgement dated 27.07.2011.

4. It is also averred that similar situated workmen who were performing duty of Chaudhary were granted pay scale of Chaudhary from the date when they were asked to perform duty on the higher post and management has challenged the order dated 27.07.2011 of the Labour Court in the matter of MCD vs Sultan Singh as well as before the Hon'ble Supreme Court of India by Special Leave to Appeal No.S20069/2011 and the plea by MCD has been dismissed by both, before the High Court as well as the Hon'ble Supreme Court. Workman, herein, is also similarly situated and doing work of Chaudhary and as such, entitled to same benefits. Finally, it is prayed that an award may be passed in his favour..

5. Management has demurred claim of the workman by taking preliminary objections, inter alia, present dispute not being an industrial dispute as there is no espousal & no demand notice has been served upon the management, claim being misconceived, claim being stale etc. In para 5 of the preliminary objection, it is admitted that the workman herein was engaged on the post of mali on daily wage basis and was later on regularized on the same post of mali with effect from 01.04.1981. There is prescribed procedure for promotion to the post of Garden Chaudhary and there must be sanctioned/vacant post of Garden Chaudhary to which the workman can lay claim when he has passed trade test conducted by the department. Claimant has not passed the said trade test nor is he performing duties of Garden Chaudhary. No orders have been passed by any competent authority for assigning the duty of Garden Chaudhary in any manner to the claimant. It is further alleged that the workman herein is not entitled for any relief on account of delay and laches and reliance is also put on judgements of the Apex Court in the case of 'Nedungadi Bank Limited Vs. K.P. Madhavankutty & ors' (2002 (2) SC 4) and State Co-op Land Development Bank Vs. Neelam (2005) 5 SC 91). Management, on merits, have denied material averments. It is also denied that the workman herein was performing duties of Chaudhary with effect from 01.11.1999. Accordingly, it is prayed that claim of the workman herein is liable to be dismissed, being devoid of merits. Claimant has not passed the said trade test nor is he performing duties of Garden Chaudhary. Management, on merits, have denied material averments. It is also denied that the workman herein was performing duties of Chaudhary with effect from 01.04.1989. Accordingly, it is prayed that claim of the workman herein is liable to be dismissed, being devoid of merits.

6. Against this factual background, based on pleadings of the parties, this Tribunal vide order dated 13.07.2017 framed the following issues:

(i) Whether reference is not legally maintainable, in view of the various preliminary objections, as alleged?

(ii) In terms of reference

(iii) Relief

7. Claimant, in support of his case, examined himself as WW1 and Shri B.K. Prasad as WW2 and tendered in evidence their affidavit Ex.WW1/A & Ex.WW2/A and also tendered in evidence documents Ex.WW1/1 & Ex.WW1/2 and Ex.WW2/1 and Ex.WW2/2 respectively. Management, in order to rebut the case of the claimant, examined Shri Sube Singh, Assistant Director (Horticulture) as MW1, whose affidavit is Ex.MW1/A and also relied on documents Ex.MW1/1 and Ex.MW1/2.

8. I have heard Shri B.K. Prasad, A/R for the claimant and Ms.Savita Madan, A/R for the management.

Findings on Issue No.(i)

9. It is clear from the preliminary objections taken in the written statement by the management that the management has raised objection that no demand notice has been served upon the management nor the MCD General Mazdoor Union has any locus standi to raise the present dispute as the union is not a recognized union of the management. To my mind, there is no requirement of law that a dispute can be raised only by a recognized union. In this regard, it is appropriate to refer to the judgement of the Hon'ble Apex Court in the case of State of Bihar Vs. Kripa Shankar Jaiswal (AIR 1961 (2) SC Report 1) wherein also objection was taken on behalf of the management that the union was not a registered under the Trade Union Act on the date of the settlement and said plea was rejected by observing as under:

> 'Held, that for a dispute to constitute an industrial dispute it is not a requisite condition that it should be sponsored by a recognized union or that all the workmen of an industrial establishment should be parties to it. A settlement arrived at in course of conciliation proceedings falls within Section 18(3)(a) and (d) of the Industrial Disputes Act and as such binds all the workmen though an unregistered union or only some of workmen may have raised the dispute. The absence of notice under Section 11(2) by the Conciliation Officer does not affect the jurisdiction of the conciliation officer and its only purpose is to apprise the establishment that the person who is coming is the conciliation officer and not a stranger. Any contravention of Section 12(6) in not submitting the report within 14 days may be a breach of duty on the part of the conciliation officer ; it does not affect the legality of the proceedings which terminated as provided in Section 20(2) of the Act.

10. Equally merit-less is the plea taken by the management that the present dispute is not sponsored or espoused by substantial number of workmen. It is fairly settled position in law that even non-espousal of a case by the union would not deprive the workman of the relief to which the workman is otherwise entitled under the law. Such view appears to have been taken in the case of Nazrul Hassan Siddiqui vs. Presiding Officer, Industrial cum Labour Court Bombay (1997) Lab.I.C. 1807. In the above cited case also contention was raised by the management that the dispute dies not fall within the definition of 'industrial dispute' and the same has not been referred or supported by substantial section of workmen. High Court rejected the plea of the management by placing reliance upon the decision of the Hon'ble Supreme Court in the case of Associated Cement Companies Ltd. (AIR 1960 SC 777), which it was observed as under:

> 'We have already noticed that an industrial dispute can be raised by a group of workmen or by a union even though neither of them represent the majority of the workmen concerned; in other words, the majority rule on which the appellant's construction of Section 19(6) is based is inapplicable in the matter of the reference under Section 10 of the Act. Even a minority group of workmen can make a demand and thereby raise an industrial dispute which in a proper case would be referred or adjudication under Section 20.'

11. In view of the ratio of the judgement discussed above, it is clear that espousal of a dispute by the union is not sine qua non for adjudication of such dispute in terms of Section 10 of the Act.

12. Admittedly, in the present case, reference has been made under Section 10 sub Section (2A) of the Act for adjudication. It is now well settled position in law that when a reference has been made for adjudication to the Tribunal or Labour Court, as the case may be, it is paramount duty of the court to decide the same on merits, irrespective of the pleas taken by the management. The dispute in the case in hand cannot be said to be stale for the simple reason that there is no previous adjudication of the matter between the parties from a competent court nor that there is inordinate delay in approaching this Tribunal by the workman.

13. It has been held by the Hon'ble Apex Court in the case of Raghubir Singh vs. General Manager (2014) Lab.I.C. 4266 - (2014) 10 SCC 301 that a reference for adjudication to the Industrial Tribunal can be made by the appropriate Government at any time and provisions of Limitation Act does not apply. There are clear observations in the above judgement that industrial dispute is to be decided by the Tribunal or Labour Court on merits, irrespective of the pleadings on limits. Therefore, ratio of law in the case of 'Nedungadi Bank Limited Vs. K.P. Madhavankutty & ors' (supra) and State Co-op Land Development Bank Vs. Neelam (supra) is not applicable to the case in hand as there is no inordinate delay nor workman is guilty of delay and laches in approaching the court. Consequently, this issue is decided in favour of the workman and against the management.

Findings on Issue No.(ii)

14. Now, the main issue which requires determination in the case in hand is whether the workman herein is entitled for grant of pay scale of 3050-4590 as revised from time to time alongwith consequential benefits. It is clear from pleadings of the parties that initially the workman herein was appointed as mali on daily wage basis and later on he was regularized on the same post of mali. This fact has been admitted even by the management in para 3 of the preliminary objections.

15. There is also ample evidence on record that the workman herein was performing duty as officiating Chaudhary. It is clear from perusal of office order dated 12.08.2004 Ex.WW1/1 that that name of the claimant finds mention at serial No.34 in the list of acting chaudharies attached with the letter and in the column *'Karyavahak Chaudhary ke ke pad par* , it is mentioned '01.11.1999'. Claimant, in order to prove his case, has tendered in evidence his affidavit Ex.WW1/A, wherein material averments contained in statement of claim has been reiterated. It is specifically alleged in the affidavit that he was doing work of acting Chaudhary with effect from 01.11.1999. There are also averments in his affidavit that one Shri Jai Chand has also been granted pay scale of Chaudhary by the management of MCD and Sultan Singh and others vs. MCD, who were doing work of acting Chaudhary , vide judgement of the Hon'ble High Court, i.e. in the case of MCD vs. Sultan Singh & others and necessary orders for implementation of the said judgement were issued by MCD.

16. There is no merit in the stand taken by the management in its reply, that the workman here is not entitled for promotion to the post of Chaudhary inasmuch as he has not appeared in the trade test conducted by the department. To my mind, this plea is devoid of any merit inasmuch as similarly situated other workers who were performing duties of Chaudhary, i.e. acting Chaudhary have been granted pay scale of Garden Chaudhary after judgement dated 27.07.2011 rendered by the Hon'ble High Court in the case of MCD vs. Sultan Singh as well as MCD vs. Mahipal(WP 5550 of 2010). Operating portion of the judgement in Sultan Singh (supra) of the Hon'ble Division Bench is as under:

> "28. Considering the entire facts and circumstances it is apparent that the claim of the respondents have always been that they should be paid the difference in pay of Mali/Chowkidar and the Garden Chaudhary as they were made to work on the post of Garden Chaudhary whereas the petitioner had first denied that they worked as Garden Chaudharies, then took the plea that the Assistant Director (Horticulture) was not competent to ask the respondents to work as Garden Chaudharies and that the respondents cannot be appointed

to the post of Garden Chaudharies in accordance with the recruitment rules. There is no doubt that respondents are not claiming appointment to the post of Garden Chaudharies on account of having worked on ad-hoc basis on the post of Garden Chaudhary contrary to rules or that some of them not having the requisite qualifications are entitled for relaxation.

29. In the entirety of facts and circumstances therefore, the learned counsel for the petitioner has failed to make out any such grounds which will impel this Court to exercise its jurisdiction under Article 226 of the Constitution to set aside the orders of the Tribunal dated 29th January, 2010 and 7th October, 2010 as no illegality or un- sustainability or perversity in the orders of the Tribunal has been made out.

30. The writ petition is, therefore, dismissed. Parties are left to bear their own cost."

17. It is further clear that SLP was also filed by MCD before the Hon'ble Apex Court by special leave application No. S20069/2011 MCD vs. Sultan Singh and others which was also dismissed as withdrawn vide order dated 09.04.2012. It is further clear that the Hon'ble High Court in Sultan Singh case strongly deprecated the stand taken by the management that the workmen were not possessing requisite qualification or have not qualified the test etc. It was clarified that since the workmen were discharging duties to the post of Garden Chaudhary, as such, workmen were entitled for the salary of Garden Chaudhary and competent authority need not look into anything else except the fact that the workman had worked as Garden Chaudhary. Therefore, stand taken by the management that the workman herein could not qualify the test conducted by the department is without any merit and has no relevance so far as question of grant of salary against the post of Garden Chaudhary is concerned.

18. It is not out of place to mention here that even if the claimant herein was not a party in Sultan Singh case referred above, judgement of the Hon'ble High Court is binding on the management and management is required to implement the same in letter and spirit and the same is judgement in rem, and all similarly situated workmen are required to be accorded the benefit of the said judgement of the Hon'ble High Court, which have become final. There is no question of even plea of delay and laches when management had not led any evidence to prove the same. The Hon'ble High Court has decided an abstract proposition of law, i.e. a mali who is performing duty as officiating/acting Chaudhary is entitled to the salary/wages of Chaudhary. Law is fairly settled that if a person is working on a higher post, on adhoc or temporary basis, even such workman is entitled to salary/wages of higher post, unless rules or regulations specifically provides otherwise. I find support to this view from Secretary vs. Lieutenant Governor Port Blair (1998 Lab.I.C. 598), yet in another case, Hon'ble Apex Court while considering that question of grant of benefits to similarly situated employees who were not party to the writ petition or lis in the case of State of Uttar Pradesh vs. Arvind Kumar Srivastava (2015) 1 SCC 347 observed as under:

"The moot question which requires determination is as to whether in the given case, approach of the Tribunal and the High Court was correct in extending the benefit of earlier judgment of the Tribunal, which had attained finality as it was affirmed till the Supreme Court. The legal principles that can be culled from the judgments, cited both by the appellants as well as the respondents, can be summed up as under:

(1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

(2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

(3) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularization and the like (see K.C. Sharma & Ors. v. Union of India (supra). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get

the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence."

19. In view of the discussions made herein above, it is held that the workman herein, Shri Zile Singh is entitled to the pay scale of Garden Chaudhary with effect from 01.11.1999 and as a corollary, management is liable pay the difference of wages of mali vis-a-vis Garden Chaudhary from the date when the workman herein was performing duties and functions of Garden Chaudhary. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : May 9, 2018

A. C. DOGRA, Presiding Officer

नई दिल्ली, 28 मई, 2018

का.आ. 884.—कर्मचारी राज्य बीमा अधिनियम 1948 (1948 का 34) की धारा–1 की उप धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा उस तिथि को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय– IV (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय– V और VI (धारा–76 की उप धारा–(1) और धारा–77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है) के उपबंध **तेलंगाना** राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात्:–

क्रम. सं.	जिला	क्षेत्र / जिला	अधिसूचना	धारा 1(3) की तिथि	धारा 1(5) की तिथि
1	हैदराबाद / सिंकदराबाद	हैदराबाद / सिंकदराबाद छावनी निगम की नगरपालिका सीमाएं ——————————— हैदराबाद पश्चिम तालुक में कुपटपल्ली फतेनगर, भोलखोम गुडा के राजस्व ग्राम ——————————— 1) हैदराबाद शहरी तालुक के मलकजगिरी एवं मुलई सहित सभी ग्राम ——————————— 2) हैदराबाद पश्चिम तालुक में मूसापेट, बालानगर, लिंगमपल्ली तथा अलवल के राजस्व ग्राम 3) हैदराबाद पूर्व तालुक के सरूरनगर, उप्पल, रमंतपुर तथा नाचाराम के राजस्व ग्राम 4) मेदचल तालुक के कुतुबुल्लाहपुर मल्लापुरम के राजस्व ग्राम ———————————	सा.आ. 938, दि. 23 / 4 / 55 भारत का राजपत्र 1955, असाधारण, खण्ड, धारा–3, पृष्ठ 781 ——————————— सा.आ.1067, दि. 20.3.1967, भारत का राजपत्र, 1967, भाग–II, धारा–3, पृष्ठ 1187 ———————————	1 / 5 / 55 ——————— 26 / 3 / 1967 ———————	30 / 3 / 1975 ——————— 30 / 3 / 1975 ———————
		रंग रेड्डी जिले में कंचनबाग, चिंतलकुंता, करमंघट और मंसूराबाद के राजस्व गांव के भीतर के क्षेत्र	भारत सरकार की अधिसूचना सं. एस–3013 / 11 / 81–एच.1, दिनांक 2 / 5 / 1981	03 / 5 / 1981	16 / 5 / 1990
2	रंग रेड्डी	रंग रेड्डी जिले का संपूर्ण क्षेत्र	भारत का राजपत्र, दिनांक 18 / 5 / 2016 में प्रकाशित एस–38013 / 21 / 2016–एस.एस.1, दिनांक द्वारा जारी सा.आ.सं.1053	01 / 06 / 16	

3	मेढक महबूबनगर निज़ामाबाद आदिलाबाद खम्मम	मेढक, महबूबनगर, निज़ामाबाद, आदिलाबाद,खम्मम जिले के संपूर्ण क्षेत्र	भारत का राजपत्र दिनांक 18.06.2016 में प्रकाशित एस—38013/25/2016—एसएस—1 दिनांक 01.07.2016 द्वारा जारी सां.आ.सं.1213	01/7/2016	
4	नलगोंडा, वारंगल, करीमनगर,	नलगोंडा, वारंगल, करीमनगर जिलों का संपूर्ण क्षेत्र	भारत का राजपत्र दिनांक 06.08.2016 में प्रकाशित एस—38013/33/2016—एसएस—1 दिनांक 26.07.2016 द्वारा जारी सां.आ.सं. 1617	01/8/2016	

निम्नलिखित 31 जिलों जो कि पूर्व के पूर्ण रूप से अधिसूचित दस जिलों में से बनाए गए है, में ये उपबंध उस तिथि से लागू माने जायेंगे जिस तिथि से उनसे संबंधित क्षेत्र पहले से ही अधिसूचित थे :—

क्रम.सं	जिले का नाम	क्रम.सं.	जिले का नाम
1.	रंग रेड्डी	17.	नलगोंडा
2.	अदिलाबाद	18.	निरमल
3.	भद्रादरी	19.	निज़ामाबाद
4.	जग्तिअल	20.	पेदापल्ली
5.	जनगांव	21.	राजन्ना
6.	जोगुलाम्बा	22.	संगारेड्डी
7.	कामरेड्डी	23.	सिद्दीपेट
8.	करीमनगर	24.	सूर्यापेट
9.	खम्मम	25.	विकाराबाद
10.	कोमरम भीम	26.	वानपर्ति
11.	महबूबाबाद	27.	वरंगल (ग्रामीण)
12.	महबूबनगगर	28.	वरंगल (शहरी)
13.	मंचिर्याल	29.	यदादरी
14.	मेदक	30.	जयशंकर
15.	मेदचल	31.	हैदराबाद
16.	नगरकुर्नूल		

[सं. एस—38013/14/2017—एस.एस.I]

संतोष कुमार सिंह, अवर सचिव

New Delhi, the 28th May, 2018

S.O. 884.—In exercise of the powers conferred by Sub-Section (3) of Section 1 of the Employees State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the dates on which the areas were already notified for implementation as the date on which the provisions of Chapter IV (except Section 44 and 45 which have already been brought into force) and Chapter-V and VI (except Sub-Section (1) of Section 76 and Section 77,78,79 and 81 which have already been brought into force) of the said Act shall come into force in the following areas in the State of **Telangana** namely:-

Sl. No.	Districts	Areas/Districts	Notification	Section1(3) Date	Section 1(5) Date
1.	Hyaderabad/ Secunderabad	Muncipal limits of the Corporation of Hyderabad and Secunderabad Cantonment _____ Revenue villages of Kupatpally Fathenagar, Bholkhom Guda, in the Hyderabad West Taluq.	S.R.O. 938 D.T.23/4/55 in Gazette of India 1955. Extraordinary PT. Section -3, Page 781	1/5/55	30/3/1975
		1) All the Village of Hyderabad Urban taluq including malkajgiri and Moulai _____ 2)The Revenue villages of Moosapet, Balanagar, Lingampalli and Alwal in Hyderabad West Taluq. 3) The Revenue village of Saroornagar, Uppal, Ramanthapur and Nacharam of Hyderabad East Taluq. 4) The Revenue village of Qutubullahpoor Mallapuram of Medchal Taluq.	S.O 1067 dt. 20.3.1967 Gazette of India 1967 part-II Section-3, page 1187	26/3/1967	30/3/1975
		The areas within the Revenue village of Kanchanbagh, Chintalkunta, Karmanghat and Mansoorabad in Ranga Reddy District. _____	Govt. of India Notification No. S-3013/11/81-HI dated 2/5/1981	03/5/1981	16/5/1990
2	Ranga Reddy	Entire area of Rranga Reddy district	S.O No. 1053 issued vide no. S--38013/21/2016-SS.I, Dated 18/05/2016 published in Gazette of India dated 18.5.2016	01/06/16	
3	Medak, Mahabubnagar, Nizamabad, Adilabad, Khammam	Entire area of Medak, Mahabubnagar, Nizamabad, Adilabad, Khammam districts _____	S.o No. 1213 issued vide no. S-38013/25/2016-SS-I dated 01/07/2016, published in Gazette of India dated 18.6.2016	01/7/2016	
4	Nalgonda, Warangal,	Entire area of Nalgonda, Warangal, Karimnagar districts	S.o. no. 1617 issued vide No. S-38013/33/2016-SS-	01/8/2016	

	Karimnagar		I dated 26/07/2016, published in Gazette of India dated 06.8.2016		

The provisions stand extended in the following 31 districts reorganized from earlier ten fully notified districts, from the dates in which their respective areas were already notified:-

Sr. No.	Name of Districts	Sr. No.	Name of Districts
1.	Ranga Reddy	17.	Nalgonda
2.	Adilabad	18.	Nirmal
3.	Bhadradri	19.	Nizamabad
4.	Jagitial	20.	Peddapalli
5.	Jangaon	21.	Rajanna
6.	Jogulamba	22.	Sangareddy
7.	Kamareddy	23.	Siddipet
8.	Karimnagar	24.	Suryapet
9.	Khammam	25.	Vikarabad
10.	Komram Bheem	26.	Wanaparthy
11.	Mahabubabad	27.	Warangal(Rural)
12.	Mahabubnagar	28.	Warangal(Urban)
13.	Mancherial	29.	Yadadri
14.	Medak	30.	Jayashankar
15.	Medchal	31.	Hyderabad
16.	Nagarkurnool		

[No. S-38013/14/2017-SS.I]

S. K. SINGH, Under Secy.

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